

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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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:

**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 California 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 Project 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 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<sup>2</sup>”) in December 2020 and the North-of-the-Delta Offstream Storage Investigation Feasibility Report Addendum in January 2023, which 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

[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) Exhibit G: Agreement Between the Department of Water Resources of the State of California, the United States Bureau of Reclamation, and Federal the Sites Project Authority to Coordinate in the Operations Agreement of the Sites Reservoir Project; (ii) Public Benefits Agreements with California 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 Capacity 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) —“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~~

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.

(l)(f) “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)(g) “Downstream Federal Facilities” shall mean ~~the Project Facilities or other all facilities that are utilized~~owned by select Storage Partners~~the United States, including those listed in the Project Specific Information in the Benefits and Obligations Contract~~Exhibit C, 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~~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,~~

~~improvement, or regulatory compliance activities incurred after completion of the Project~~  
~~Facilities to the extent not covered by Fixed O&M Costs.~~

~~(s)~~(i) “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.

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

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

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

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

~~(\*)~~~~(p)~~ “Refuge Water Points of the IL-4 Delivery” shall mean locations at which the Water Purveyor delivers water supplies made available by Reclamation to the refuges.

~~(y)~~~~(q)~~ “Project Use Energy” 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.

~~(r)~~ “~~Public Benefit Agreements~~Sites Project Facilities” shall mean ~~the agreement between~~ all facilities constructed by the Sites Authority and DWR; anticipated for the benefit of the Sites Project. Sites Project Facilities are listed in Exhibit B.

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

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

~~(aa)(t)~~ “Secondary Delivery Point” shall mean ~~a location other than the Delivery~~  
~~Points that the Colusa Basin Drain, at which the Authority will make water supplies available to~~  
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, outlined in Exhibit D to this Agreement.~~

~~(bb)(u)~~ “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.

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

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

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

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

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

~~(ll)(aa) “Storage Partner” shall mean 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.~~ Sites Project Facilities Capacity Interest and the associated Sites Water.

(mm) ~~“SWP Participants” shall mean 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.~~

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

(nn)(cc) “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 Generally Accepted Accounting Principles, and wheeling costs [on a per Acre-foot basis] to account for the use of partner facilities Sites Project Facilities, and incurred by the Sites Authority in connection with the Sites Project in an amount which is dependent upon and varies with the amount of Sites Water diverted, stored or released from the Sites Project Facilities to the Participants. Storage Partners in that Year, to which all Storage Partners are Subject.

(dd) “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.

## **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 any 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) The United States and the Authority shall jointly 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. The review shall compare the relative success which each Party has had in meeting its objectives, as outlined in this Agreement and this Agreement's exhibits, including, but not limited to, those objectives in the Spend Plan in Exhibit A.

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

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

3. Pursuant to ~~§ 4007~~-WIIN Act § 4007, 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], Subject to this Agreement,~~ Reclamation is committing to pay for and the Sites Authority hereby grants, ~~and Reclamation shall own ownership of a [a sixteen (16) percent Baseshare of Sites Project Facilities Capacity Interest] I accordance with this Agreement. . Provided however, and associated 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~~

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, ~~IL4 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 invest 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~~



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

~~(f)~~(e) Reclamation ~~agrees~~intends to execute contracts on a schedule to support ~~project~~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.~~

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

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

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

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

**COSTS ASSOCIATED WITH THE SITES PROJECT**

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

(a) Upon the determination of 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 total Sites Project Facilities Capacity Interest within 180 days to determine and mutually agree upon changes in final investment and commensurate Sites Project Facilities Capacity Interest in the Project due to fluctuations of costs through construction. The final Sites Project Facilities Capacity Interest 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). If an extension is desired by either Party, the Parties will meet and confer to determine a reasonable time frame.

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

~~(b)(c)~~ 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.

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

(i) Costs ~~incurred~~associated 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~~upfront Federal investment ~~toward the Project include~~including 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 ~~declaring~~Completion of the Sites Project ~~Substantially Complete~~ may be required. The Authority will 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~~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 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: ~~The Authority is owner~~Reclamation's design and ~~operator of~~review 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 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 Reclamation's benefits are believed to be ~~materially~~ impacted by a change in the design, it ~~may~~will be considered material, ~~consistent with the similar terms and conditions in the Benefits and Obligations Contract.~~. Material changes ~~will be addressed within the governance of the Project~~in the design will require the Parties to meet and

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

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

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

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

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

~~b.a. Fixed O&M Costs assigned annually to~~  
~~Reclamation shall be proportionate to Sites Project Facilities Capacity Interest and Share, such~~  
~~Participant's interest in Water and such Participant's right to convey Water; and / or~~

~~e. 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.~~

b. Variable O&M Costs assigned annually to  
Reclamation shall be proportionate to the use of Sites Project Facilities Capacity Interest

(2) Use of Reclamation's Conveyance Capacity: In the event a  
Storage Partner utilizes Reclamation's Conveyance Capacity in the Dunnigan Pipeline, the  
Authority will develop and charge a rate commensurate with Conveyance Capacity used. Such  
rate will be applied to said Storage Partner and the funding will be credited to Reclamation's  
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 refuges~~Refuge 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 ~~30~~90 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.

(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)(b) 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, 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 either Reclamation or the Authority fails to resolve a deficiency within the agreed-upon schedule, then either Reclamation or the Authority may seek other remedies as prescribed in this Agreement in Article 10.

~~(g)(h)~~ To the extent power, energy, or other services are generated by the Sites 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 Reclamation in proportion to the amount of Sites Water released on behalf of ~~the Storage Partners Reclamation~~ during the ~~Fiscal~~ Year. The Parties acknowledge and agree that the release of Sites Water has a higher priority than the generation of power by Project Facilities and power generation is not guaranteed to ~~Storage Partners Reclamation~~ with the release of Sites Water.

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

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

#### **OPERATION OF SITES ~~RESERVOIR~~ PROJECT FACILITIES**

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

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

(a)(b) Reclamation agrees to timely provide requests for Sites Water to be stored 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 Authority~~ The  
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.

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

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

~~(e)~~(f) Subject to Section (f) below, the Sites Authority or Reclamation may request Capital Improvements to the Sites Project Facilities to provide an added benefit to the Project (~~“Capital Modifications”~~). Such Capital ~~Modifications~~Improvements 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)~~(g) Reclamation may not opt out of necessary Capital ~~Modifications~~Improvements to Sites Project Facilities required to maintain initial Project functions and that provide benefits initially contemplated for the Project. If Reclamation is subject to Capital Improvements of the Sites Project Facilities, Reclamation's benefits will be commensurate with Reclamation's costs.

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

~~(h)~~(i) The Authority will deliver Sites Water to the Refuge Water Points of Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant

to the State of ~~California~~California's investment, ~~as described in Exhibit D. without any cost to~~  
Reclamation ~~shall~~. Reclamation will deliver Sites Water ~~to meet from~~ the Project's IL4Refuge  
Water ~~obligations pursuant~~Points of Acceptance to the ~~State of California investment at~~  
Reclamation's cost, as described in Exhibit D. Refuge Water Points of Delivery.

(i) The Parties, along with ~~DWR, will~~ the California Department of  
Water Resources, will execute Exhibit G to identify coordination processes for Sites Water  
diversions, and 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~~the California Department of Water  
Resources, will consider changes necessary to represent conditions at the time of Completion and  
execute ~~such three party agreement prior to Completion.~~ an amendment to Exhibit G as needed.

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

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

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

(iv) ~~The Authority makes no representation, warranty or guarantee,~~  
Secondary Delivery Points, and Refuge Water Points of the Acceptance.

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

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

#### ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE

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

7. ~~Reclamation will serve as the ESA Section 7 consultation lead for the initial construction and water-related operation of Sites Reservoir Project Facilities.~~ 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 applicable law and regulation.

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

(b) It is the understanding of the Parties that ~~any~~ future ~~reconsultation~~ 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 CVP ~~and 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 amended ~~and~~; 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 ensuring~~verify and ensure the Project's ~~ESA Section 7~~  
619 ~~construction environmental~~ compliance during the life of the Project. The Authority is  
620 ~~implemented without delay throughout the duration of construction.~~

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

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

~~8.(d)~~ Through the development, execution, and implementation of a Programmatic Agreement to address adverse effects to historic properties, Reclamation will remain in 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 to ensure the Project's Section 106 construction compliance is timely implemented without delay throughout the duration of construction.

~~9.(e)~~ 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**

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

~~10.(a)~~ 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~~its obligations under this Agreement for the period during which ~~they~~

are it is 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~~ Article 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.~~ practicable.

#### **DEFAULT; FAILURE OF TIMELY PAYMENT**

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

#### **DISPUTE RESOLUTION**

##### **11. — Default**

##### **(a) Written Demand**

(i) If Reclamation fails to ~~(i)~~ timely make any ~~capital~~ O&M 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~~ 180 days from the date of such demand, such failure shall constitute a ~~default~~ failure of a timely payment at the expiration of such period; provided that if a



failure described in this Section cannot be remedied within ~~30~~180 days from the date of such demand but Reclamation commences remedial action within such ~~30-180~~ day period and diligently pursues the remedy of such ~~default~~failure of a timely payment until the remedy is complete and ~~(B)~~-such failure is remedied within ~~90~~180 days from the date of the initial demand, such failure shall not constitute a ~~default~~failure of a timely payment 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~~180 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~~

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

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

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

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

711 (iii) — Subject to Section (iv) below, in the event that the Sites Authority  
712 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~~

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.

(3)(2) 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.

## DISPUTE RESOLUTION

### ~~(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.~~

~~12.10.~~ 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)-1 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, or violate the terms of this Agreement without Reclamation's consent.

## **OPINIONS AND DETERMINATIONS**

~~13.11.~~ 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~~Project Facilities.

**WATER MEASUREMENT**

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

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

~~(b)(a) The~~ Good Industry Practices. Upon request of the Contracting Officer, the accuracy of such measurements will be investigated by the 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. any errors appearing therein will be corrected.~~

**SEVERABILITY**

~~15.13.~~ 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**

~~16.14.~~ 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**

~~18.15.~~ 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**

~~19.16.~~ 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.

**OFFICIALS NOT TO BENEFIT**

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

**ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

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

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

**BOOKS, RECORDS, AND REPORTS**

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

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

## **COMPLIANCE WITH LAWS**

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

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Agreement that are consistent with its expressed and implied provisions, the laws of the United States and the rules and regulations promulgated by the 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.

## **COMPLIANCE WITH CIVIL RIGHTS**

24.21. (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.

#### **FUNDS TO BE PROVIDED**

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

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

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

935 (c) The Sites Authority will deposit each payment in an individual insured  
936 account or accounts for Reclamation established and held by the Sites Authority separate and  
937 apart from the Sites Authority's other funds and accounts, and shall apply such amount,  
938 including the investment earnings thereon, to pay Reclamation's share of the cost of the  
939 applicable proportionate Project costs in accordance with the terms of this Agreement. Such  
940 accounts and any investments shall be held in compliance with applicable law.

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

947 **MEDIUM FOR TRANSMITTING PAYMENTS**

948 25.23. (a) All payments from the Authority to the United States under this  
949 Agreement shall be by the medium requested by the United States on or before the date payment  
950 is due. The required method of payment may include checks, wire transfers, or other types of  
951 payment specified by the United States.

952 (b) Upon execution of the Agreement, the Authority shall furnish the  
953 Contracting Officer with the Authority's taxpayer's identification number (TIN). The purpose for  
954 requiring the Authority's TIN is for collecting and reporting any delinquent amounts arising out  
955 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  
963 **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 \_\_\_\_\_