

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
California

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
- Exhibit C: Associated Reclamation-owned Facilities
- Exhibit D: List of Sites Authority Obligations
- Exhibit E: Final Capacity Interest
- Exhibit F: Excess Capacity Contract
- Exhibit G: 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 of the Sites Reservoir Project
- Exhibit H: Allowable Costs; Approval, Documentation, and Cost Allocation

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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

[1st] 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

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

[3rd] 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 Project, a State-led storage project; and

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

[5th] 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

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

[7th] WHEREAS, on November 2, 2023, the Authority and Reclamation released a joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter “FEIR/FEIS”², 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

[8th] WHEREAS, the Sites Authority intends to enter into and comply with 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 (i) Exhibit G: 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 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.

[9th] WHEREAS, the Sites Authority intends to enter into and comply with contracts with agencies to convey water related to and from the Project.

[10th] WHEREAS, the Sites Authority entered into the Colusa County / Sites Authority Memorandum of Understanding and Sites Water originating from Funks Creek and its

tributaries, Stone Corral Creek and its tributaries, and the watershed of Sites Reservoir shall be allocated consistently with such agreement.

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) "Allowable Costs" means those costs eligible for reimbursement or credit under this Agreement as defined and subject to Exhibit H Allowable Costs; Approval, Documentation, and Cost Allocation.

(a)(b) "Anadromous Fish Benefits" shall mean the Sites Water ~~that Reclamation manages~~ in Reclamation's ~~Storage~~ Capacity Interest and Share in Sites Reservoir to meet Reclamation's environmental compliance obligations.

(c) "Base Facilities" shall mean the Project Facilities or other facilities available to all Storage Partners including those listed in Exhibit [], as modified from time to time.

(d) "Base Facilities Capacity Interest" shall mean the undivided capacity right of each Storage Partner to store, convey and divert Sites Water in each of the Base Facilities granted by the Sites Authority and owned by the Storage Partner pursuant to the terms of the Benefits and Obligations Contract and this Agreement, and in the pro-rata share set out for each Storage Partner in Exhibit [], as modified from time to time and subject to the Sites Water Right, applicable law and governmental approvals.

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

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

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

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

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

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

(j) "Downstream Facilities" shall mean the Project Facilities or other facilities that are utilized by select Storage Partners listed in Exhibit [], as modified from time to time.

(k) "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 Exhibit [], as modified from time to time in accordance with this Agreement.

~~(g)(1)~~ "Federal Facilities" shall mean all facilities owned by the United States, including those listed in Exhibit C, as modified from time to time.

(m) "Fixed O&M Costs" shall mean all costs, calculated in accordance with Generally Accepted Accounting Principles, incurred by the Sites Authority to administer, operate, maintain, power, repair, replace, and, to the extent that reserves are available, rehabilitate and improve, the Project. (ii) attributable to the conveyance and storage of water in the Project Facilities excluding pumping costs, carriage costs, and power interference costs; (iii) for the Sites Authority defense or other legal costs, including payment of claims, settlements or judgments (iv) to meet regulatory requirements associated with the Project; including administrative and legal costs of the Sites Authority, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and [insurance premiums], and including all other reasonable and necessary costs of the Sites Authority, or charges required to be paid by it to comply with the terms of the financing agreements or the Benefits and Obligations Contract; (v) to replenish operating reserves of the Project; and (2) amounts required for compliance with Sections 3.2 and 3.5 of the Master Resolution of the Sites Authority or any similar provisions thereof; but excluding in all cases (A) depreciation, replacement and obsolescence charges or

reserves for such costs, (B) amortization of intangibles or other bookkeeping entries of a similar nature, (C) costs of capital additions, replacements, betterments, extensions or improvements to the Project, which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation and (D) [Sites financing costs, in each case incurred by the Sites Authority with respect to the Project. Fixed O&M Costs are incurred irrespective of the amount of water diverted, stored or released to the Participants]. Fixed O&M Costs include any and all costs and expense that are not Fixed Project Costs, Sites financing costs or Variable O&M Costs that may accrue to the Sites Authority after execution of this Agreement.

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

~~(h) —“Fixed O&M Costs” shall mean all costs, calculated in accordance with Generally Accepted Accounting Principles, incurred by the Sites Authority to administer, operate, maintain, power, repair, replace, and, to the extent that reserves are available, rehabilitate and improve, the Project.~~

~~(i)(o)~~ “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.

(p) “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.

(q) “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 ~~Agreement~~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.

(r) “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.

(s) “In-kind Services” shall mean eligible time and effort, real and personal property, and goods and services, as defined ~~by the Department of the Interior in Exhibit H.~~ In-kind ~~Services~~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~~in-kind ~~Services~~services shall be in accordance with 2 CFR Part 200.

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

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

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

(w) “Participants” means the parties listed in Exhibit [], as modified from
time to time.

(x) “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.

(y) “Sites Project Facilities” shall mean all facilities constructed by the Sites
Authority for the benefit of the Sites Project. Sites Project Facilities are listed in Exhibit B.

~~(s) “Sites Project Facilities Capacity Interest” shall mean the undivided
capacity right of each Storage Partner to the Sites Project Facilities and associated Sites Water
granted by the Sites Authority and owned by the Storage Partner commensurate with investment.~~

(z) “Secondary Delivery Point” shall mean the Colusa Basin Drain, at which
the Authority will make water supplies available to Reclamation outlined in Exhibit D to this
Agreement.

(aa) “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.

(v)(bb) “Sites Project” or “Project” shall mean the Sites Project Facilities managed, owned and operated by the Sites Authority. Sites Project Facilities are outlined in Exhibit B to this Agreement.

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

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

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

~~(z) — “Storage Capacity” shall mean a Storage Partner’s physical space in Sites Reservoir and accompanying Sites Water commensurate with its Sites Project Facilities Capacity Interest.~~

(aa)(ff) “Storage Partner” shall mean the governmental agencies, water organizations, and others who have funded and received Sites Project Facilities Capacity Interest and Share and the associated Sites Water.

~~(gg) “Spend Plan” mean the Spend Plan in Exhibit A, as prepared and amended in accordance with this Agreement.~~

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

~~(ee)(ii)~~ “Variable O&M Costs” shall mean the operation, maintenance, power (including pumping), carriage costs, power interference costs, replacement and other costs, including funding of reserves in accordance with Generally Accepted Accounting Principles, and wheeling costs [on a per Acre-foot basis] to account for the use of 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 Sites Project Facilities to the Storage Partners in that Year, to which all Storage Partners are Subject.

~~(dd)(ii)~~ “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.

(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 exhibits as needed.

FEDERAL PARTICIPATION IN THE SITES PROJECT

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

(a) Subject to appropriations and the terms of this Agreement, Reclamation ~~intends isto~~ committing to pay for and the Sites Authority hereby grants Reclamation ownership of a ~~[sixteen (16) percent] Baseshare of Sites Project~~ Facilities Capacity Interest, a ~~[sixteen (16) percent] Downstream Facilities Capacity Share~~ and ~~an ability to utilize up to sixteen (16) percent of Sites associated Sites-Water originating from~~ commensurate with Federal investment in the Sacramento River pr ~~Sites Project. ovided however the Parties agree Reclamation bears the risk of loss, shortfall or reduction in Sites Water.~~

~~(b)~~ The Sites Authority shall allocate to each Storage Partner who requests to participate ~~With its participation~~ in the funding and use of Downstream Facilities, a Downstream Facilities Capacity Share in the amounts described in Exhibit [] and otherwise in accordance with Section [] of this Agreement, provided such amount shall not be less than 16%.

~~(b)(c)~~ The Parties agree Reclamation intends to receive Sites Water for operational flexibility and Anadromous Fish Benefits, as identified in the November 2022 North of Delta Off-stream Storage Investigation Feasibility Report Addendum (Addendum), and shall make reasonable and beneficial use of Sites Water consistent with all applicable law.

~~(c)(d)~~ Reclamation intends to execute contracts on a schedule to support Project implementation with the Authority consistent with Reclamation's standard terms and conditions and covering:

(i) Reclamation's acceptance of IL4 refuge water from the Sites Authority at no cost to Reclamation, and conveyance of that water to the intended refuge(s).

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

(iii) Land Use Authorization allowing use of any Federally-owned property needed to locate and build Sites Project Facilities.

(iv) Provision of non-potable water service for the duration of construction at Project worksites served from existing Federal Facilities, subject to availability, as determined by Reclamation.

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.), ~~Reclamation costs shall only be credited, reimbursed or otherwise applied toward,); the Authority is responsible for accounting for~~ Reclamation's ~~participation in the estimated~~ Sites Project ~~if they constitute Allowable Costs..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 within a reasonable time frame 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 Capacity Interest ~~investment~~ and Share allocation to Reclamation. The final ~~commensurate Sites Project~~

~~Facilities Capacity Interest and Share 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.~~

(b) The Parties agree:

~~(b)(i)~~ Authority's and Reclamation's Allowable Costs costs prior to the Effective Date of this Agreement set out in Column [] of Table [] of Exhibit H as "payable" will be credited ~~in Exhibit A to Reclamation's each Party's~~ share of costs associated with the Sites Project in accordance with this Article 4: ~~7~~

~~(c)(ii)~~ Reclamation's Allowable Costs after ~~If the Effective Date of Parties identify costs that are not defined in this Agreement set out in Column [] of Table [] of Exhibit H as "payable" but believe should be allowable, the Parties will be credited meet and confer to Reclamation's share of Projects costs come to mutual agreement on such costs. After mutual agreement in accordance with writing, the parties will label these costs as allowable without amendment to this Agreement.~~

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

(i) Costs associated with upfront Federal investment including but 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 Completion of the Sites Project 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 investment in the Project.~~

~~(5) — Administrative Costs: Include, unless otherwise defined by contracts: project management, construction management, accounting and administrative management, 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~~

328 ~~reserve sufficient funding to pay for its administrative costs for the non-Federal share of the Sites~~
329 ~~Project.~~

330 ~~(6) — Design and Review Costs: Reclamation's design and~~
331 ~~review costs associated with the Sites Project will be considered part of the overall Federal~~
332 ~~investment into the Sites Project. Reclamation will provide an estimate of the design and review~~
333 ~~costs for the Sites Project, if requested. Either Party may pay for part or all of various design~~
334 ~~costs for the Sites Project. The Authority will be designer of record for the Sites Project. There~~
335 ~~may be the need for modifications during construction that may require further design work. If~~
336 ~~Reclamation's benefits are believed to be impacted by a change in the design, it will be~~
337 ~~considered material. Material changes in the design will require the Parties to meet and confer on~~
338 ~~the best course of action and to determine if the additional cost is beneficial and allowable.~~

339 ~~(7) — Construction Costs: The Authority will procure the~~
340 ~~construction contractors and will manage construction contracts with respect to the Sites Project.~~
341 ~~If Reclamation's benefits are believed to be impacted by a change in the construction contract, it~~
342 ~~will be considered material. Material changes in the construction contract will require the Parties~~
343 ~~to meet and confer on the best course of action and to determine if the additional cost is~~
344 ~~beneficial to the Project and allowable.~~

345 ~~(iii)~~ (ii) Expected Ongoing Costs associated with the operation of the
346 Sites Project including but not limited to:

347 (1) O&M Costs: The Authority will be responsible for O&M
348 of the Sites Project. The Authority will identify the annual O&M Costs attributable to
349 Reclamation.~~Reclamation's operational flexibility and Anadromous Fish Benefits.~~ Reclamation

will pay the attributable portion within 90 days of receiving an invoice, subject to available appropriations.

a. Fixed O&M Costs assigned annually to Reclamation shall be proportionate to Reclamation's Capacity Interest and Share and associated Downstream~~Sites Project~~ Facilities Capacity. ~~Interest~~

b. Variable O&M Costs assigned annually to Reclamation shall be proportionate to Reclamation's~~the~~ use of is Capacity Interest and Share associated Downstream~~Sites Project~~ Facilities Capacity. ~~Interest~~

(2) Use of any Reclamation's unused Downstream Facilities~~Conveyance~~ Capacity Share: In the event a non-authorized Storage Partner utilizes Reclamation's Downstream Facilities~~Conveyance~~ Capacity Share in the Dunnigan Pipeline, the Authority will develop and charge the non-authorized Storage Partner a rate for such use commensurate with the use, unless otherwise directed by Reclamation. Proceeds received~~Conveyance Capacity used. Such rate will be applied to said Storage Partner and the funding~~ will be credited toward~~to~~ Reclamation's fixed and variable O&M cost~~account~~.

(3) In-kind Services: ~~To facilitate continued Project operations,~~ Reclamation's In-kind Services will count toward Reclamation's contribution to Sites Project ongoing expected future costs as described~~associated with Federal participation in this Agreement. In-kind services shall only be credited if the scope, valuation methodology, and allocation basis are approved by the Authority in advance and are documented in accordance with Exhibit H. In-kind services that are insufficiently documented or not directly allocable to the Sites Project costs shall not be Allowable Costs or count towards Reclamation's contribution to Sites Project costs.~~

~~(4) — IL4 Water Costs: While the Authority is responsible for delivering water supply to the Refuge Water Points of Acceptance, Reclamation's costs for wheeling water from the Refuge Water Points of Acceptance to the Refuge Water Points of Delivery shall be considered an In-kind Service.~~

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

(i) Any interest or fees related to financing activity of the Sites Authority and their Storage Partners shall not be paid by Reclamation.

(ii) The Project is not part of the Central Valley Project, and as such, will not receive Project Use Energy.

(iii) Other non-allowable costs are described in Exhibit H.

~~(f)(d)~~ Within 90 days of this Agreement's execution, Reclamation and the Authority will develop Exhibit A, a ~~Spend Plans~~spend plan containing mutually agreeable terms for Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for funds expended. The Parties agree that the Project's forecasted and actual revenue and expenditures in Exhibit A may ~~be~~ modified by ~~the Authority~~mutual agreement to reflect real-time Project activities without amendment to this Agreement.

~~(g)(e)~~ 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, ~~Articles 9~~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~~ shall apply.

(f) To the extent power, energy, or other revenue sources are generated by the Sites Project Facilities, sales of such power, energy and all other revenue sources will be managed by the Sites Authority. Any revenue received by the Sites Authority that is attributable to Reclamation's Capacity Interest and Share or the use of Reclamation's Capacity Interest and Share for the sale or other disposition of power, energy or other revenue sources shall be used to offset Reclamation's Variable O&M Costs, and to the extent that such revenues exceed Reclamation's Variable O&M Costs in a Year, any remaining revenues will be used to offset Reclamation's Fixed O&M Costs. The Parties acknowledge and agree that the release of Sites Water has a higher priority than the generation of power by Sites Project Facilities and power generation is not guaranteed to Reclamation with the release of Sites Water.

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

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

OPERATION OF SITES PROJECT FACILITIES

6. The Sites Authority will operate and maintain the Sites Project Facilities in good faith and in accordance with all applicable agreements, laws, law, environmental requirements and permits and approvals. ~~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 Project Facilities will be operated in a manner that avoids harm to the Central Valley Project ~~and ,its contractors, its water rights, and Federal Facilities.~~

(b) Reclamation agrees to timely provide requests for Sites Water to be stored in Reclamation's ~~Storage~~-Capacity Interest and Share and Sites Water to be released from Reclamation's ~~Storage~~-Capacity Interest and Share to the Delivery Points. The Authority agrees to take reasonable actions, consistent with law and this Agreement, to achieve Reclamation's storage and release requests to the Delivery Points. At Reclamation's request and cost, including water loss and risk of loss or shortfall, the Authority will take reasonable actions to convey Reclamation's Sites Water to a Secondary Delivery Point.

(c) The Authority will operate the Project so as to maximize the water supply and water supply related environmental benefits while continuing to provide the flood control and recreational benefits. The diversion of Sites Water to storage will take priority over the release of water except in cases of severe flooding. The Authority, in good faith, may temporarily discontinue or reduce the conveyance of Sites Water to, and release of Sites Water from, the Sites Project Facilities in various emergency and non-emergency situations to protect life and property as part of the flood control benefit.

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

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

~~(ii)(c) Reclamation's share of Sites Water diversions and releases will be proportionate commensurate with its Storage Capacity Interest and Share.-~~

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

(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. Such Capital Improvements shall be subject to approval by the Sites Authority. The Sites Authority will prepare and distribute a document detailing the anticipated Project costs and benefits of the proposed Capital Improvements.

(g) Reclamation may not opt out of necessary Capital 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.

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

(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's investment, without any cost to Reclamation. Reclamation will deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of Delivery.

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

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

~~(iii)(l)~~ Reclamation will maintain its operational independence 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.

~~(iv)(m)~~ The Authority will be responsible for providing power to operate and maintain the Sites Project Facilities and to convey Sites Water to the Delivery Points, ~~Secondary Delivery Points, and Refuge Water Points of Acceptance.~~

~~(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)(n)~~ ~~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

7. Reclamation will serve as the ESA Section 7 consultation lead for the initial construction and water-related operation of Sites 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 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 future reinitiation of consultation on the operations of the Central Valley Project after an initial incidental take statement for the effects from the operations of the Sites Project does not automatically require a reinitiation of consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of consultation on the Sites Project to jointly review, among other things, the information before each agency, potential approaches, and possible outcomes. In any consultation that has the potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the specific changes contemplated for the Sites Project must meet one of the criteria in accordance

with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties will cooperate in the preparation and negotiation of the reinitiation of consultation and the resulting revised incidental take statement specific to the Sites Project.

(c) The ~~Authority Parties agree to meet and confer as necessary to verify and ensure the Project's environmental compliance during the life of the Project. The Authority is~~ responsible for ~~documenting~~ environmental compliance with ~~regard to the Mitigation, Monitoring and Reporting Plan and other~~ applicable federal, state and local laws for the construction and operations of the Sites Project. The Authority will document its compliance with these requirements, as appropriate, environmental permits (e.g., Clean Water Act, Endangered Species Act) and agrees to provide ~~such environmental compliance~~ documentation to Reclamation upon request.

(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. The Parties agree to meet and confer as necessary to ensure the Project's Section 106 construction compliance is timely implemented throughout the duration of construction.

(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

(a) Upon the occurrence of an event of Force Majeure, 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

Reclamation 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 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 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 practicable.

FAILURE OF TIMELY PAYMENT

9. Pursuant to WIIN Act § 4007, Reclamation may fund up to twenty-five (25) percent of the Sites Project. Reclamation shall diligently pursue funding sufficient to meet its obligations under this Agreement in a timely manner.

(a) Fixed Project Costs for Completion.

550 (i) Reclamation shall diligently pursue funding so as to ensure there
551 are sufficient funds appropriated to cover two years of Fixed Project Costs, based on costs
552 anticipated to be incurred during the following two (2) year period based on the Spend Plan. If
553 sufficient funds have not been appropriated to cover such costs, then Reclamation shall develop a
554 plan to pursue funding for Fixed Project Costs sufficient to meet its obligations in a timely
555 manner and the Parties shall meet and confer to review such plan.

556 (ii) The Parties will work diligently to execute appropriate funding
557 mechanisms, or amendments thereto, such that funding for Fixed Project Costs shall be made
558 available to the Authority one (1) year in advance of such Fixed Project Cost being incurred,
559 based on the Spend Plan.

560 (iii) The Authority will provide Reclamation with a billing statement
561 for Reclamation's share of Fixed Project Costs, based on such costs anticipated to be incurred,
562 during the following one (1) year period based on the Spend Plan, which shall be due within 30
563 days of issuance of the billing statement.

564 (iv) Upon a Fixed Project Cost for Completion default of Reclamation:
565 a. Consistent with Article X [FUNDS TO BE PROVIDED], if
566 Reclamation has not made sufficient funding available to the Authority within 90 days of
567 issuance of the billing statement, the Sites Authority shall make written demand upon
568 Reclamation. The written demand shall identify the portion of Reclamation's Capacity Interest
569 and Share that is at risk of default, being that portion of Reclamation's Capacity Interest and
570 Share that has not yet been paid, based on the current Spend Plan and in accordance with this
571 Article ("Defaulted Interest"). If such funding is not made available to the Authority within an

additional 90 days from the date of such demand, Reclamation is deemed to have not made timely payment and is in default as it relates to the Defaulted Interest.

b. Upon a default of Reclamation, the Sites Authority shall use its best efforts to facilitate a sale of Reclamation's applicable Defaulted Interests.

c. 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 financial 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.

d. Subject to Section (iv) below, in the event that the Sites Authority is unable to facilitate a sale of all of Reclamation's Defaulted Interests 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.

e. 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, the Defaulted Interests shall be apportioned pro rata to Participants.

f. Notwithstanding that all or any portion of Reclamation's Defaulted Interests is so sold, Reclamation shall remain liable to the Sites Authority to pay the full amount of its share of costs under this Agreement as if such sale has not been made, except that such liability shall be discharged to the extent that the Sites Authority shall receive payment from the buyer thereof for that share of costs.

f.g. In the event that the Sites Authority sells all or a portion of Reclamation's Defaulted Interest, such monies shall be distributed for application as follows: (a) to the payment of, or (as the case may be) the reimbursement of the Authority for all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or sustained by the Authority in connection with the sale of Reclamation's Defaulted Interest and the collection of such monies by the Authority; (b) to the Sites Authority for Reclamation's full amount of its share of costs under this Agreement (including any interest, expenses or other obligations); and (c) the excess, if any, shall be paid to Reclamation.

(b) Fixed Project Costs and Fixed O&M Costs Not Related To Completion.

(i) The Authority will provide Reclamation with an estimated billing statement for Reclamation's share of Fixed Project Costs and Fixed O&M Costs based on such costs anticipated to be incurred during the one (1) year period starting two (2) years after the date of the billing statement.

(ii) The Parties will work diligently to execute appropriate funding mechanisms, or amendments thereto, such that funding for Fixed Project Costs and Fixed O&M

Costs shall be made available to the Authority based on such costs anticipated to be incurred, during the following one (1) year period.

(iii) The Authority shall provide Reclamation a billing statement for Reclamation's share of Fixed Project Costs and Fixed O&M Costs, based on such costs anticipated to be incurred during the one (1) year period starting one (1) years after the date of the billing statement, which shall be due within 30 days of issuance of the billing statement. .

(iv) Consistent with Article X [FUNDS TO BE PROVIDED], if Reclamation has not made sufficient funding available to the Authority within 90 days of issuance of the billing statement, the Sites Authority shall make written demand upon Reclamation. The written demand shall identify the payment shortfall (Defaulted Amount). If sufficient funding is not made available to the Authority within 90 days from the date of such demand, Reclamation is deemed to have not made timely payment and is in default.

a. Upon a Fixed Project Cost or Fixed O&M Cost default of Reclamation not related to Completion:

i. The Authority shall use its best efforts to facilitate a sale(s) of Sites Water from Reclamation's Capacity Interest and Share to cover the Defaulted Amount, including the reimbursement of the Authority for all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or sustained by the Authority in connection with the sale of Sites Water to cover Reclamation's Defaulted Amount;

ii. Reclamation shall have no right to utilize Sites Water in its Capacity Interest and Share, no right to otherwise utilize its Capacity Interest and Share, and agrees to allows other Storage Partners to utilize its Capacity Interest and Share until its account is no longer in default; and

iii. Reclamation's right of first refusal in Article 5 is suspended until its account is no longer in default.

(c) Variable O&M Costs.

(i) The Authority will provide Reclamation with an estimated billing statement for Reclamation's share of Variable O&M Costs based on such costs anticipated to be incurred during the six (6) month period starting one (1) year after the date of the billing statement.

(ii) The Parties will work diligently to execute appropriate funding mechanisms, or amendments thereto, such that funding for Variable O&M Costs shall be made available to the Authority based on such costs anticipated to be incurred, during the following six (6) month period.

(iii) The Authority shall provide Reclamation a billing statement for Reclamation's share of Variable O&M Costs based on such costs anticipated to be incurred for the six (6) month period starting six (6) months after the start of the billing statement, which shall be due within 30 days of issuance of the billing statement.

a. Consistent with Article X [FUNDS TO BE PROVIDED], if Reclamation has not made sufficient funding available to the Authority within 30 days of issuance of the billing statement, the Sites Authority shall make written demand upon Reclamation. The written demand shall identify the payment shortfall ("Defaulted Amount"). If sufficient funding is not made available to the Authority within 30 days from the date of such demand, Reclamation is deemed to have not made timely payment and is in default.

b. Upon a Variable O&M Costs default of Reclamation:

i. The Sites Authority shall use its best efforts to facilitate a sale(s) of Sites Water from Reclamation's Capacity Interest and Share to cover the Defaulted Amount, including the reimbursement of the Authority for all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or sustained by the Authority in connection with the sale of Sites Water to cover Reclamation's Defaulted Amount;

ii. Reclamation shall have no right to utilize Sites Water in its Capacity Interest and Share, no right to otherwise utilize its Capacity Interest and Share, and agrees to allow other Storage Partners to utilize its Capacity Interest and Share until its account is no longer in default; and

iii. Reclamation's right of first refusal in Article 5 is suspended until its account is no longer in default.

(d) Reclamation's Fixed O&M Costs and Variable O&M Costs shall be determined in accordance with Exhibit [].

(e) Enforcement of Remedies

(i) In addition to the other remedies set forth in this Article (Dispute Resolution), upon the occurrence of an event of default in accordance with this Agreement, any Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this Agreement by such appropriate judicial proceeding as such Party shall deem most effectual, either by suit in equity or by action at law, to enforce any other legal or equitable right vested in such Party by this Agreement or by law. The provisions of this Agreement and the duties of each Party, their respective boards, officers or employees shall be enforceable by the other Parties by

mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the losing Party paying all costs and attorney fees of the prevailing Party.

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

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

~~(2)~~b. 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 carry out its duties and obligations under the law and its covenants and agreements as provided herein.

DISPUTE RESOLUTION

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) 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.

(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

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 Project Facilities.

WATER MEASUREMENT

12. The Sites Authority 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) 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 Good Industry Practices. Upon request of the Contracting Officer, the accuracy of such measurements will be investigated by the Sites Authority and any errors appearing therein will be corrected.

SEVERABILITY

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.

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14. (a) 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.

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(b) Reclamation shall 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 Sites Project Facility.

NOTICES

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 Authority, 122 Old Highway 99 West, Maxwell, CA 95955.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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

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

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

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

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, Article 9 and Article 10 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 disbursed by the Contracting Officer as deemed appropriate by transferred to the Authority if determined to be appropriate by the Contracting Officer.~~

(b) Upon execution of this Agreement, funds for any additional funds not required by the Spend Plan 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 addition to funds ~~particular installments in accordance with~~ required by 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.

(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

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.

AGREEMENT DRAFTING CONSIDERATIONS

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

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

(SEAL) THE UNITED STATES OF AMERICA

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

894 SITES AUTHORITY

895 By: _____
896 Chair, Board of Directors

897 Attest:

898 _____