

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 B: Sites Project Information and Facilities

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Exhibit D: List of Sites Authority Obligations

Exhibit E: Final Capacity Interest

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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:

13

EXPLANATORY RECITALS

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

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

22 [3rd] WHEREAS, the Sites Project Authority, previously known as the Sites Joint
23 Powers Authority, was formed as a California joint powers authority operating under and by
24 virtue of Section 6500 et seq., of the California Government Code and formed in accordance
25 with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be
26 modified from time to time, with the primary purpose of designing, constructing, owning,
27 operating and maintaining the Sites Project, a State-led storage project; and

28 [4th] WHEREAS, Reclamation completed the North-of-the-Delta Offstream Storage –
29 Sites Feasibility Report (“Feasibility Report”^{””}) in December 2020 and the North-of-the-Delta
30 Offstream Storage Investigation Feasibility Report Addendum in January 2023, which
31 determined the potential Federal and non-Federal interest in the selected alternative; and

32 [5th] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with
33 State water rights laws, the right to use the capacity of a State-led storage project for which the
34 Secretary of the Interior has entered into an agreement under this subsection shall be allocated in

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

37 [6th] WHEREAS, pursuant to § 4007(f)(1) of the WIIN Act, the California Water
38 Commission determined that the State-led Sites Project is consistent with the California Water
39 Quality, Supply, and Infrastructure Improvement Act; and

40 [7th] WHEREAS, on November 2, 2023, the Authority and Reclamation released a
41 joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter
42 “FEIR/FEIS”^{””}, for the Project; and the Authority certified the FEIR/FEIS and adopted the
43 Project with Board Resolution 2023-02; and on [DATE], Reclamation signed its Record of
44 Decision for the construction and operation of the Sites Project; and

45 [8th] WHEREAS, the Sites Authority intends to enter into and comply with contracts
46 with State and local agencies pursuant to which the State and local agencies will receive certain
47 benefits (including water service) and have certain obligations related to the Sites Project. These
48 include (i) Exhibit G: Agreement Between the Department of Water Resources of the State of
49 California, the United States Bureau of Reclamation, and the Sites Project Authority to
50 Coordinate in the Operations of the Sites Reservoir Project ; (ii) Public Benefits Agreements
51 with California State Agencies; (iii) Proposition 1 Water Storage Investment Program Contract
52 with the California Water Commission; and (iv) Benefits and Obligations Contract.

53 [9th] WHEREAS, the Sites Authority intends to enter into and comply with contracts
54 with agencies to convey water related to and from the Project.

55 [10th] WHEREAS, the Sites Authority entered into the Colusa County / Sites Authority
56 Memorandum of Understanding and Sites Water originating from Funks Creek and its

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

59

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

61 **DEFINITIONS**

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

64 (a) “Allowable Costs” means those costs eligible for reimbursement or credit
65 under this Agreement as defined and subject to Exhibit H Allowable Costs; Approval,
66 Documentation, and Cost Allocation.

67 (a)(b) “Anadromous Fish Benefits” shall mean the Sites Water ~~that Reclamation~~
68 manages in Reclamation’s Storage Capacity Interest and Share in Sites Reservoir to meet
69 Reclamation’s environmental compliance obligations.

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

73 (d) “Base Facilities Capacity Interest” shall mean the undivided capacity right
74 of each Storage Partner to store, convey and divert Sites Water in each of the Base Facilities
75 granted by the Sites Authority and owned by the Storage Partner pursuant to the terms of the
76 Benefits and Obligations Contract and this Agreement, and in the pro-rata share set out for each
77 Storage Partner in Exhibit [], as modified from time to time and subject to the Sites Water
78 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.

82 **(b)(1)** “Capital Improvements” shall mean any activity that extends the useful
83 life of a property, plant or equipment asset, expands the capacity or efficiency of an asset, or
84 otherwise upgrades an asset to serve needs different from, or significantly greater than, an asset’s
85 current use, or as defined in the current version of the *Blue Book* entitled Federal Replacements,
86 Units, Service Lives, Factors, or in accordance with Federal law and accounting standards, or
87 any other regulations, policies, guidelines, or instructions adopted thereunder.

95 (e) "Conveyance Capacity" shall mean a Storage Partner's physical space in
96 the Sites Project Facilities infrastructure commensurate with Sites Project Facilities Capacity
97 **Interest.**

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

103 (k) "Downstream Facilities Capacity Share" shall mean a share expressed in
104 percentage based on the ratio of each Storage Partner's Base Facilities Capacity Interest to the
105 sum of the total Base Facilities Capacity Interest of all Storage Partners with Downstream
106 Facilities Capacity Share, specified in Exhibit [], as modified from time to time in accordance
107 with this Agreement.

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

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

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

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

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

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

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

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

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

159 (m)(s) “In-kind Services” shall mean eligible time and effort, real and personal
160 property, and goods and services, as defined ~~by the Department of the Interior in Exhibit H.~~ In-
161 kind Serviceservices may be applied to the cost-share, but the value of the in-kind contributions
162 must be evaluated and documented as described in Article 4. Valuation of Inin-kind
163 Serviceservices shall be in accordance with 2 CFR Part 200.

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

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

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

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

173 ~~(e)(x)~~ “Project Use Energy” shall mean the electrical capacity, energy, and
174 associated ancillary service components required to provide the minimum electrical service using
175 the most economical methods needed to operate and/or maintain Reclamation-owned facilities in
176 conformance with project authorization.

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

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

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

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

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

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

195 (x)(dd) "Sites Water" shall mean the water that is appropriated

diverted

 under the
196 Sites Water Right.

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

199 (z) — "Storage Capacity" shall mean a Storage Partner's physical space in Sites
200 Reservoir and accompanying Sites Water commensurate with its Sites Project Facilities
201 Capacity Interest.

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

205 (gg) "Spend Plan" mean the Spend Plan in Exhibit A, as prepared and amended
206 in accordance with this Agreement.

207 (bb)(hh) "Water Purveyor" shall mean contractors with which Reclamation
208 has agreements to convey water to refuges.

209 (ee)(ii) "Variable O&M Costs" shall mean the operation, maintenance, power
210 (including pumping), carriage costs, power interference costs, replacement and other costs,
211 including funding of reserves in accordance with Generally Accepted Accounting Principles, and
212 wheeling costs [on a per Acre-foot basis] to account for the use of Sites Project Facilities, and

213 incurred by the Sites Authority in connection with the Sites Project in an amount which is
214 dependent upon and varies with the amount of Sites Water diverted, stored or released from
215 Sites Project Facilities to the Storage Partners in that Year, to which all Storage Partners are

216 Subject to

217 ~~(dd)(jj)~~ “Year” shall mean the period beginning on January 1 of each calendar
218 year and ending on the last day of December of such calendar year.

219 **TERM OF AGREEMENT**

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

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

226 (b) The United States and the Authority shall jointly review this Agreement,
227 which review shall be performed at least every five (5) years. A more frequent review will occur
228 if determined to be appropriate by the Parties. The review shall compare the relative success
229 which each Party has had in meeting its objectives, as outlined in this Agreement and this
230 Agreement’s exhibits, including, but not limited to, those objectives in the Spend Plan. ~~in~~
231 Exhibit A.

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

236

FEDERAL PARTICIPATION IN THE SITES PROJECT

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

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

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

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

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

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

COSTS ASSOCIATED WITH THE SITES PROJECT

268 4. All Project costs associated with this Agreement shall be compliant with Federal
269 law and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of
270 Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the
271 Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency
272 Act (31 U.S.C. § 1341 et seq.). Reclamation costs shall only be credited, reimbursed or
273 otherwise applied toward.), the Authority is responsible for accounting for Reclamation's
274 participation in the estimated Sites Project if they constitute Allowable Costs..eosts and
275 ultimately crediting, in full, the actual Sites Project eosts incurred by Reclamation to prepare,
276 review and/or approve the Project.

282 ~~Facilities Capacity Interest and Share in the Project due to fluctuations of costs through~~
283 ~~construction. The final Sites Project Facilities Capacity Interest attributable to Reclamation's~~
284 final investment will be documented in Exhibit E to this Agreement ~~and will be monitored~~
285 ~~throughout the duration of this Agreement on a quarterly basis in accordance with Article 4 (g).~~
286 ~~If an extension is desired by either Party, the Parties will meet and confer to determine a~~
287 ~~reasonable time frame.~~

288 (b) The Parties agree:

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

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

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

300 (i) ~~Costs associated with upfront Federal investment including but not~~
301 ~~limited to:~~

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

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

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

314 (4) ~~Permitting Costs: Additional permitting actions prior to~~
315 ~~Completion of the Sites Project may be required. The Authority will determine, as appropriate,~~
316 ~~the appropriate Party to obtain any necessary permit(s), and if Reclamation is involved, the~~
317 ~~Parties will mutually agree upon the appropriate share of costs for the permitting actions to be~~
318 ~~considered Federal investment in the Project.~~

319 (5) ~~Administrative Costs: Include, unless otherwise defined by~~
320 ~~contracts: project management, construction management, accounting and administrative~~
321 ~~management, operations coordination, travel, general meetings related to the Sites Project,~~
322 ~~contract/agreement technical meetings and negotiations, and other supportive services and~~
323 ~~activities necessary for the construction and operation of the Sites Project prior to the~~
324 ~~determination of Completion. Reclamation's administrative and management costs associated~~
325 ~~with the Sites Project will be considered part of the overall Federal investment into the Sites~~
326 ~~Project. Reclamation will provide an estimate of the administrative costs for the Sites Project in~~
327 ~~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

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

352 a. Fixed O&M Costs assigned annually to
353 Reclamation shall be proportionate to Reclamation's Capacity Interest and Share and associated
354 DownstreamSites Project Facilities Capacity. Interest

355 b. Variable O&M Costs assigned annually to
356 Reclamation shall be proportionate to Reclamation's the use of is Capacity Interest and Share
357 associated DownstreamSites Project Facilities Capacity. Interest

358 (2) Use of any Reclamation's unused Downstream
359 FacilitiesConveyance Capacity Share: In the event a non-authorized Storage Partner utilizes
360 Reclamation's Downstream FacilitiesConveyance Capacity Share in the Dunnigan Pipeline, the
361 Authority will develop and charge the non-authorized Storage Partner a rate for such use
362 commensurate with the use, unless otherwise directed by Reclamation. Proceeds
363 receivedConveyance Capacity used. Such rate will be applied to said Storage Partner and the
364 funding will be credited toward Reclamation's fixed and variable O&M costaccount.

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

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

377 (e)(c) Non-allowable Costs include, but are not limited to:
378 (i) Any interest or fees related to financing activity of the Sites
379 Authority and their Storage Partners shall not be paid by Reclamation.
380 (ii) The Project is not part of the Central Valley Project, and as such,
381 will not receive Project Use Energy.

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

389 (g)(e) Reclamation and the Authority will establish, at a minimum, quarterly
390 check-ins to monitor actual expenditures related to the Sites Project, and to discuss other items,
391 including but not limited to, funding and any additional agreements. If there is a deficiency in
392 expenditures under Exhibit A, Articles 9 ~~the Parties will meet~~ and ~~confer to agree upon a~~
393 ~~schedule to remedy the deficiency. If either Reclamation or the Authority fails to resolve a~~
394 ~~deficiency within the agreed upon schedule, then either Reclamation or the Authority may seek~~
395 ~~other remedies as prescribed in this Agreement in Article 10 shall apply.~~

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

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

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

413 **OPERATION OF SITES PROJECT FACILITIES**

414 6. The Sites Authority will operate and maintain the Sites Project Facilities in good
415 faith and in accordance with all applicable agreements, laws,law, environmental requirements
416 and permits and approvals, water rights. The Sites Authority will protect the Sites Water Right

417 and will manage, control, and protect Sites Water in good faith and in accordance with all
418 applicable laws and regulations.

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

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

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

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

438 (i) ~~Reclamation's deliveries will take priority over any other Storage~~

439 ~~Partner in the Sites Project to provide the Central Valley Project operational flexibility and~~

440 ~~Anadromous Fish Benefits to ensure commitments are met.~~

441 (ii)(e) Reclamation's share of Sites Water diversions ~~and releases~~ will be

442 proportional commensurate with its Storage Capacity Interest and Share..

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

444 ~~the Sites Operations Plan.~~

445 (f) Subject to Section (f) below, the Sites Authority or Reclamation may

446 request Capital Improvements to the Sites Project Facilities to provide an added benefit to the

447 Project. Such Capital Improvements shall be subject to approval by the Sites Authority. The

448 Sites Authority will prepare and distribute a document detailing the anticipated Project costs and

449 benefits of the proposed Capital Improvements.

450 (g) Reclamation may not opt out of necessary Capital Improvements to Sites

451 Project Facilities required to maintain initial Project functions and that provide benefits initially

452 contemplated for the Project. If Reclamation is subject to Capital Improvements of the Sites

453 Project Facilities, Reclamation's benefits will be commensurate with Reclamation's costs.

454 (h) In the event that proposed Capital Improvements are not approved by the

455 Sites Authority, Storage Partners may elect to continue with the Capital Improvements. Those

456 Project costs and benefits associated with such Capital Improvements shall be allocated only to

457 the subset of Storage Partners electing to proceed with the Capital Improvements in accordance

458 with an agreement among the Sites Authority and such Storage Partners.

459 (i) The Authority will deliver Sites Water to the Refuge Water Points of

460 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant

461 to the State of California's investment, without any cost to Reclamation. Reclamation will
462 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of
463 Delivery.

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

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

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

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

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

480 ~~(j)(n) The~~ Sites Authority and Reclamation each agree that Reclamation shall be
481 allowed, at reasonable times and upon reasonable prior notice, and at Reclamation's expense, to
482 enter onto Sites Project Facilities for reasonable purposes in accordance with the Sites

483 Authority's reasonable safety regulations and policies and subject to applicable law and
484 governmental approvals.

485 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

486 7. Reclamation will serve as the ESA Section 7 consultation lead for the initial
487 construction and water-related operation of Sites Project Facilities. Reclamation and the
488 Authority will meet and confer on future Project activities to determine the most appropriate
489 ESA consultation approach and lead agency consistent with applicable law and regulation.

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

495 (b) It is the understanding of the Parties that future reinitiation of consultation
496 on the operations of the Central Valley Project after an initial incidental take statement for the
497 effects from the operations of the Sites Project does not automatically require a reinitiation of
498 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of
499 consultation on the Sites Project to jointly review, among other things, the information before
500 each agency, potential approaches, and possible outcomes. In any consultation that has the
501 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the
502 Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries
503 Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while
504 avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the
505 specific changes contemplated for the Sites Project must meet one of the criteria in accordance

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

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

517 (d) Through the development, execution, and implementation of a
518 Programmatic Agreement to address adverse effects to historic properties, Reclamation will
519 remain in compliance with Section 106 of the National Historic Preservation Act of 1966, as
520 amended for the construction of the Sites Project. The Parties agree to meet and confer as
521 necessary to ensure the Project's Section 106 construction compliance is timely implemented
522 throughout the duration of construction.

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

528

EXCUSED PERFORMANCE

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

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

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

544

FAILURE OF TIMELY PAYMENT

545
546 9. Pursuant to WIIN Act § 4007, Reclamation may fund up to twenty-five (25)
547 percent of the Sites Project. Reclamation shall diligently pursue funding sufficient to meet its
548 obligations under this Agreement in a timely manner.

549 (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.

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

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

574 b. Upon a default of Reclamation, the Sites Authority shall

575 use its best efforts to facilitate a sale of Reclamation's applicable Defaulted Interests.

576 c. The other non-defaulting Storage Partners holding a

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

586 d. Subject to Section (iv) below, in the event that the Sites

587 Authority is unable to facilitate a sale of all of Reclamation's Defaulted Interests to other non-
588 defaulting Storage Partners in accordance with Section (ii) above, the Sites Authority may make
589 such Defaulted Interests available to entities other than the non-defaulting Participants, and may
590 enter into an agreement with such entities for the purchase of all or a portion of Reclamation's
591 Defaulted Interests and the assumption of the related obligations under this Agreement.

592 e. In the event that the Sites Authority is unable to enter into
593 an agreement with entities for the purchase of all or a portion of Reclamation's Defaulted Interest

594 and the assumption of the related obligations under this Agreement, the Defaulted Interests shall
595 be apportioned pro rata to Participants.

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

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

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

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

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

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

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

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

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

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

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

641 (c) Variable O&M Costs.

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

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

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

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

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

675
676 (e) Enforcement of Remedies
677 (i) In addition to the other remedies set forth in this Article (Dispute
678 Resolution), upon the occurrence of an event of default in accordance with this Agreement, any
679 Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this
680 Agreement by such appropriate judicial proceeding as such Party shall deem most effectual,
681 either by suit in equity or by action at law, to enforce any other legal or equitable right vested in
682 such Party by this Agreement or by law. The provisions of this Agreement and the duties of each
683 Party, their respective boards, officers or employees shall be enforceable by the other Parties by

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

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

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

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

695 DISPUTE RESOLUTION

696 10. Should any dispute arise concerning any provision(s) of this Agreement, or the
697 Parties' rights and obligations thereunder, the United States and the Authority shall meet and
698 confer in an attempt to resolve the dispute. Prior to commencing any legal action, or Reclamation
699 referring any matter to the Department of Justice, the Party shall provide to the other Party thirty
700 (30) days' written notice of the intent to take such action; *Provided*, That such notice shall not be
701 required where a delay in commencing an action would prejudice the interests of the Party that
702 intends to file suit. During the thirty (30) day notice period, the Parties shall meet and confer in
703 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
704 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

711 11. Where the terms of this Agreement provide for actions to be based upon the
712 opinion or determination of either Party to this Agreement, said terms shall not be construed as
713 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
714 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
715 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
716 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
717 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
718 affect or alter the standard of judicial review applicable under Federal law to any opinion or
719 determination implementing a specific provision of Federal law embodied in statute or
720 regulation.

726 (b) Nothing in this Agreement, or performance hereunder, constitutes a
727 waiver of the Parties' respective positions, opinions, or interpretations of California water rights

728 law, whatever they may be, in circumstances where there is no mutual agreement, as applicable
729 herein, for the use of the Sites Project Facilities.

730 **WATER MEASUREMENT**

731 12. The Sites Authority is responsible for the measurement of all Sites Water pursuant
732 to this Agreement at the point(s) of delivery or point(s) of diversion established pursuant to
733 Exhibit D.

734 (a) Prior to Completion, the Authority shall ensure that the water measuring
735 devices are installed and operating properly. The Authority will be responsible for installing,
736 operating, maintaining, and repairing all such measurement devices. The equipment and methods
737 used to make such measurement shall be in accordance with Good Industry Practices. Upon
738 request of the Contracting Officer, the accuracy of such measurements will be investigated by
739 the Sites Authority and any errors appearing therein will be corrected.

740 **SEVERABILITY**

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

748

HOLD HARMLESS

749 14. (a) The Authority shall indemnify, defend, and hold harmless the United
750 States, its officers, agents, and employees from and against any and all claims, damages, losses,
751 liabilities, and expenses arising out of or resulting from the United States' work under this
752 agreement, or the design, operation, or maintenance of the Sites Project, provided the claims,
753 damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or
754 omissions on the part of the United States. The Authority will not assert that Reclamation, its
755 Director, officers, agents or employees, are liable for damages of any nature whatsoever arising
756 out of any actions or omissions by the Authority, its directors, officers, agents or employees,
757 related to the Authority's performance of this Agreement, where such liability is caused by an
758 act, error or omission of the Authority, its director, officers, agents or employees.

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

769

NOTICES

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

775

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

781

OFFICIALS NOT TO BENEFIT

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

785

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

791

BOOKS, RECORDS, AND REPORTS

792 19. The Authority shall establish and maintain accounts and other books and records
793 pertaining to administration of the terms and conditions of this Agreement, including the
794 Authority's financial transactions; water supply data; project operation, maintenance, and
795 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
796 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
797 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on

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

802 **COMPLIANCE WITH LAWS**

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

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

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

816 **COMPLIANCE WITH CIVIL RIGHTS**

817 21. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
818 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
819 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
820 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
821 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
822 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
823 Interior and/or Bureau of Reclamation.

824 (b) These statutes prohibit any person in the United States from being
825 excluded from participation in, being denied the benefits of, or being otherwise subjected to
826 discrimination under any program or activity receiving financial assistance from the Bureau of
827 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
828 Agreement, the Authority agrees to immediately take any measures necessary to implement this

829 obligation, including permitting officials of the United States to inspect premises, programs, and
830 documents.

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

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

FUNDS TO BE PROVIDED

842 22. In accordance with the Prompt Payment Act, Reclamation shall transmit payment
843 to the Sites Authority in accordance with Exhibit A, Article 9 and Article 10 and subject to
844 Article 16 of this Agreement.

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

851 (b) Upon execution of this Agreement, funds for any additional funds not
852 required by the Spend Plan may be transmitted to the Authority, provided that any such advance
853 of funds shall be released in as many installments as the Contracting Officer deems necessary.
854 The Authority may request an advance of funds in addition to funds particular installments in
855 accordance with required by the Spend Plan; ~~(Exhibit A)~~; provided that, the Authority must
856 provide the Contracting Officer written justification for the immediate need for the funds

857 requested, including how the funds would be applied, and the Contracting Officer shall have the
858 final determination of how and when installments are transmitted.

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

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

871 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

880
881

AGREEMENT DRAFTING CONSIDERATIONS

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

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

889 (SEAL) THE UNITED STATES OF AMERICA

894

SITES AUTHORITY

895

896

897 Attest:

By: _____
Chair, Board of Directors

898 _____