

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 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”^{②②}) 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 (b) "Anadromous Fish Benefits" shall mean the Sites Water that Reclamation
68 manages in Reclamation's Storage Capacity Interest and Share in Sites Reservoir that
69 Reclamation manages to meet itsReclamation'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

80 Facilities, the Base Facilities Capacity Interest; and (ii) in the case of the Downstream Facilities,
81 the Downstream Facilities Capacity Share, or both of them as the context requires.

95 (f) "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 (h)(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 (i) “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 (j)(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 (k)(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 (l)(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 Agreement
154 and all Applicable Law and Governmental Approvals in conformance with applicable
155 professional engineering principles, construction, operations and maintenance practices generally
156 accepted as standards of the industry in the State.

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

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

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

168 (e)(v) "Refuge Water Points of Delivery" shall mean locations at which the

169 Water Purveyor delivers water supplies made available by Reclamation to the refuges.

170 (w) "Participants" means the parties listed in Exhibit [], as modified from
171 time to time.

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

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

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

198 (aa)(gg) “Spend Plan” means the Spend Plan in Exhibit A, as prepared and
199 amended in accordance with this Agreement.

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

202 (cc)(ii) “Variable O&M Costs” shall mean the operation, maintenance, power
203 (including pumping), carriage costs, power interference costs, replacement and other costs,
204 including funding of reserves in accordance with Generally Accepted Accounting Principles, and
205 wheeling costs [on a per Acre-foot basis] to account for the use of Sites Project Facilities, and
206 incurred by the Sites Authority in connection with the Sites Project in an amount which is
207 dependent upon and varies with the amount of Sites Water diverted, stored or released from
208 Sites Project Facilities to the Storage Partners in that Year, to which all Storage Partners are
209 Subject.

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

212

TERM OF AGREEMENT

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

216 (a) The Parties may mutually agree to terminate this Agreement; in which
217 case, the Parties will meet and confer to come to mutual agreement regarding termination.

218 (b) Reclamation and the Authority shall jointly review this Agreement, which
219 review shall be performed at least every five (5) years. A more frequent review will occur if
220 determined to be appropriate by the Parties. The review shall compare the relative success which
221 each Party has had in meeting its objectives, as outlined in this Agreement and this Agreement's
222 exhibits, including, but not limited to, those objectives in the Spend Plan.

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

227

FEDERAL PARTICIPATION IN THE SITES PROJECT

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

230 (a) Subject to appropriations and the terms of this Agreement, Reclamation
231 intends to committing to pay for and the Sites Authority hereby grants Reclamation ownership
232 of a [sixteen (16) percent] Baseshare of Sites Project Facilities Capacity Interest, a [sixteen (16)
233 percent] Downstream Facilities Capacity Share and an ability to utilize up to sixteen (16) percent

234 of Sites associated Sites Water originating from ecommensurate with Federal investment in the
235 Sacramento River prSites Project, ovided however the Parties agree Reclamation bears the risk
236 of loss, shortfall or reduction in Sites Water.

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

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

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

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

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

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

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

257

258 **COSTS ASSOCIATED WITH THE SITES PROJECT**

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

268 (a) Upon the determination of Completion of construction of the Sites Project,
269 Reclamation and the Authority will meet and confer within a reasonable time frame to complete
270 a final accounting of the Sites Project ~~and the total Sites Project Facilities Capacity Interest~~
271 ~~within 180 days~~ to determine and mutually agree upon ~~changes in~~ final Capacity
272 Interest~~investment~~ and Share allocation to Reclamation. The final ~~commensurate~~ Sites Project
273 ~~Facilities~~ Capacity Interest ~~and Share in the Project due to fluctuations of costs through~~
274 ~~construction~~. The final Sites Project Facilities Capacity Interest attributable to Reclamation's
275 final investment will be documented in Exhibit E to this Agreement. ~~and will be monitored~~
276 ~~throughout the duration of this Agreement on a quarterly basis in accordance with Article 4 (g).~~
277 ~~If an extension is desired by either Party, the Parties will meet and confer to determine a~~
278 ~~reasonable time frame.~~

279 (b) The Parties agree:

280 (b)(i) Authority's and Reclamation's Allowable Costs ~~costs~~ prior to the

281 Effective Date of this Agreement set out in Column [] of Table [] of Exhibit H as "payable"

282 will be credited ~~in Exhibit A~~ to Reclamation's ~~each~~ Party's share of costs associated with the

283 Sites Project in accordance with this Article 4~~;~~.

284 (e)(ii) Reclamation's Allowable Costs after~~If~~ the Effective Date of Parties

285 ~~identify costs that are not defined in~~ this Agreement set out in Column [] of Table [] of Exhibit

286 ~~H as "payable" but believe should be allowable, the Parties~~ will be credited~~meet and confer to~~

287 Reclamation's share of Projects costs come to mutual agreement on such costs. After mutual

288 ~~agreement in accordance with writing, the parties will label these costs as allowable without~~

289 ~~amendment to~~ this Agreement.

290 (iii) (ii) Expected Ongoing Costs associated with the operation of the

291 Sites Project including but not limited to:

292 (1) O&M Costs: The Authority will be responsible for O&M

293 of the Sites Project. The Authority will identify the annual O&M Costs attributable to

294 Reclamation. Reclamation will pay the attributable portion within 90 days of receiving an

295 invoice, subject to available appropriations.

296 a. Fixed O&M Costs assigned annually to

297 Reclamation shall be proportionate to Reclamation's Capacity Interest and Share and associated

298 Downstream Facilities Capacity.

299 b. Variable O&M Costs assigned annually to

300 Reclamation shall be proportionate to Reclamation's use of its Capacity Interest and Share

301 associated Downstream Facilities Capacity.

302 (2) Use of any Reclamation's unused Downstream Facilities

303 Capacity Share: In the event a Storage Partner utilizes Reclamation's Downstream Facilities

304 Capacity Share in the Dunnigan Pipeline, the Authority will develop and charge the Storage

305 Partner a rate for such use commensurate with the use, unless otherwise directed by Reclamation.

306 Proceeds received will be credited toward Reclamation's fixed and variable O&M cost.

307 (3) In-kind Services: Reclamation's In-kind Services will count

308 toward Reclamation's contribution to Sites Project costs as described in this Agreement. In-kind

309 services shall only be credited if the scope, valuation methodology, and allocation basis are

310 approved by the Authority in advance and are documented in accordance with Exhibit H. In-

311 kind services that are insufficiently documented or not directly allocable to the Sites Project costs

312 shall not be Allowable Costs or count towards Reclamation's contribution to Sites Project costs.

313 (d)(c) Non-allowable Costs include, but are not limited to:

314 (i) Any interest or fees related to financing activity of the Sites

315 Authority and their Storage Partners shall not be paid by Reclamation.

316 (ii) The Project is not part of the Central Valley Project, and as such,

317 will not receive Project Use Energy.

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

319 (e)(d) Within 90 days of this Agreement's execution, Reclamation and the

320 Authority will develop Exhibit A, a Spend Plan containing mutually agreeable terms for

321 Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for

322 funds expended. The Parties agree that the Project's forecasted and actual revenue and

323 expenditures in Exhibit A may be modified by the Authority to reflect real-time Project activities

324 without amendment to this Agreement.

325 (f)(e) Reclamation and the Authority will establish, at a minimum, quarterly
326 check-ins to monitor actual expenditures related to the Sites Project, and to discuss other items,
327 including but not limited to, funding and any additional agreements. If there is a deficiency in
328 expenditures under Exhibit A, Articles 9 and 10 shall apply.

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

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

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

345

OPERATION OF SITES PROJECT FACILITIES

346 6. The Sites Authority will operate and maintain the Sites Project Facilities in good
347 faith and in accordance with all applicable agreements, laws, law, environmental requirements
348 and permits and approvals. water rights. The Sites Authority will protect the Sites Water Right
349 and will manage, control, and protect Sites Water in good faith and in accordance with all
350 applicable laws and regulations.

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

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

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

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

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

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

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

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

377 (f) Subject to Section (f) below, the Sites Authority or Reclamation may
378 request Capital Improvements to the Sites Project Facilities to provide an added benefit to the
379 Project. Such Capital Improvements shall be subject to approval by the Sites Authority. The
380 Sites Authority will prepare and distribute a document detailing the anticipated Project costs and
381 benefits of the proposed Capital Improvements.

382 (g) Reclamation may not opt out of necessary Capital Improvements to Sites
383 Project Facilities required to maintain initial Project functions and that provide benefits initially
384 contemplated for the Project. If Reclamation is subject to Capital Improvements of the Sites
385 Project Facilities, Reclamation's benefits will be commensurate with Reclamation's costs.

386 (h) In the event that proposed Capital Improvements are not approved by the
387 Sites Authority, Storage Partners may elect to continue with the Capital Improvements. Those
388 Project costs and benefits associated with such Capital Improvements shall be allocated only to

389 the subset of Storage Partners electing to proceed with the Capital Improvements in accordance
390 with an agreement among the Sites Authority and such Storage Partners.

391 (i) The Authority will deliver Sites Water to the Refuge Water Points of
392 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant
393 to the State of California's investment, without any cost to Reclamation. Reclamation will
394 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of
395 Delivery.

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

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

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

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

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

ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE

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

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

427 (b) It is the understanding of the Parties that future reinitiation of consultation
428 on the operations of the Central Valley Project after an initial incidental take statement for the
429 effects from the operations of the Sites Project does not automatically require a reinitiation of
430 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of
431 consultation on the Sites Project to jointly review, among other things, the information before
432 each agency, potential approaches, and possible outcomes. In any consultation that has the
433 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the

434 Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries
435 Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while
436 avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the
437 specific changes contemplated for the Sites Project must meet one of the criteria in accordance
438 with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties will
439 cooperate in the preparation and negotiation of the reinitiation of consultation and the resulting
440 revised incidental take statement specific to the Sites Project.

441 (c) The Authority is responsible for environmental compliance with regard to
442 other applicable federal, state and local laws for the construction and operations of the Sites
443 Project. The Authority will document its compliance with these requirements, as appropriate, and
444 agrees to provide such documentation to Reclamation upon request.

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

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

456

EXCUSED PERFORMANCE

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

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

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

472

FAILURE OF TIMELY PAYMENT

473

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

477

 (a) Fixed Project Costs for Completion.

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

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

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

492 (iv) Upon a Fixed Project Cost for Completion default of Reclamation:

493 a. Consistent with Article X [FUNDS TO BE PROVIDED], if

494 Reclamation has not made sufficient funding available to the Authority within 90 days of

495 issuance of the billing statement, the Sites Authority shall make written demand upon

496 Reclamation. The written demand shall identify the portion of Reclamation's Capacity Interest

497 and Share that is at risk of default, being that portion of Reclamation's Capacity Interest and

498 Share that has not yet been paid, based on the current Spend Plan and in accordance with this

499 Article ("Defaulted Interest"). If such funding is not made available to the Authority within an

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

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

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

514 d. Subject to Section (iv) below, in the event that the Sites
515 Authority is unable to facilitate a sale of all of Reclamation's Defaulted Interests to other non-
516 defaulting Storage Partners in accordance with Section (ii) above, the Sites Authority may make
517 such Defaulted Interests available to entities other than the non-defaulting Participants, and may
518 enter into an agreement with such entities for the purchase of all or a portion of Reclamation's
519 Defaulted Interests and the assumption of the related obligations under this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

567 iii. Reclamation's right of first refusal in Article 5 is

568 suspended until its account is no longer in default.

569 (c) Variable O&M Costs.

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

582 a. Consistent with Article X [FUNDS TO BE PROVIDED], if

583 Reclamation has not made sufficient funding available to the Authority within 30 days of

584 issuance of the billing statement, the Sites Authority shall make written demand upon

585 Reclamation. The written demand shall identify the payment shortfall (“Defaulted Amount”). If

586 sufficient funding is not made available to the Authority within 30 days from the date of such

587 demand, Reclamation is deemed to have not made timely payment and is in default.

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

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

603
604 (e) Enforcement of Remedies
605 (i) In addition to the other remedies set forth in this Article (Dispute
606 Resolution), upon the occurrence of an event of default in accordance with this Agreement, any
607 Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this
608 Agreement by such appropriate judicial proceeding as such Party shall deem most effectual,
609 either by suit in equity or by action at law, to enforce any other legal or equitable right vested in
610 such Party by this Agreement or by law. The provisions of this Agreement and the duties of each
611 Party, their respective boards, officers or employees shall be enforceable by the other Parties by

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

614 (ii) Without limiting the generality of the foregoing, the Sites

615 Authority or Reclamation, as applicable, shall have the right to bring the following actions:

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

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

DISPUTE RESOLUTION

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

633 (a) Reclamation shall have no responsibility to participate in or resolve

634 disputes between the Authority and any of the Storage Partners regarding this Agreement.

635 (b) If the Sites Authority seeks to resolve a dispute with a Storage Partner,

636 such resolution cannot impact Reclamation's investment or benefits, or violate the terms of this

637 Agreement without Reclamation's consent.

OPINIONS AND DETERMINATIONS

639 11. Where the terms of this Agreement provide for actions to be based upon the
640 opinion or determination of either Party to this Agreement, said terms shall not be construed as
641 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
642 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
643 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
644 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
645 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
646 affect or alter the standard of judicial review applicable under Federal law to any opinion or
647 determination implementing a specific provision of Federal law embodied in statute or
648 regulation.

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

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

658 **WATER MEASUREMENT**

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

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

668 **SEVERABILITY**

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

676

HOLD HARMLESS

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

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

697

NOTICES

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

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

BOOKS, RECORDS, AND REPORTS

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

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

730 **COMPLIANCE WITH LAWS**

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

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

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

744 **COMPLIANCE WITH CIVIL RIGHTS**

745 21. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
746 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
747 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
748 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
749 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
750 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
751 Interior and/or Bureau of Reclamation.

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

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

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

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

FUNDS TO BE PROVIDED

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

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

778 (b) Upon execution of this Agreement, funds for any additional funds not
779 required by the Spend Plan may be transmitted to the Authority, provided that any such advance
780 of funds shall be released in as many installments as the Contracting Officer deems necessary.
781 The Authority may request an advance of funds in addition to funds required by the Spend Plan;
782 provided that, the Authority must provide the Contracting Officer written justification for the
783 immediate need for the funds requested, including how the funds would be applied, and the

784 Contracting Officer shall have the final determination of how and when installments are

785 transmitted.

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

792 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

801

802 **AGREEMENT DRAFTING CONSIDERATIONS**

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

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

810 (SEAL) THE UNITED STATES OF AMERICA

815 SITES AUTHORITY

816 By: _____
817 Chair, Board of Directors
818 Attest:

