

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 E: 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”^{2,2} for the Project; and the Authority certified the FEIR/FEIS and adopted the
43 Project with Board Resolution 2023-02; and on January 23, 2026 Reclamation signed its Record
44 of 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 Sites Project.

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

57 its tributaries, Stone Corral Creek and its tributaries, and the watershed of Sites Reservoir to 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 in Reclamation's
68 Capacity Interest and Share in Sites Reservoir that Reclamation manages to meet its
69 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.

79 (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.

82 (f) "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.

88 (g) "Central Valley Project" or "CVP" shall mean the Central Valley Project
89 owned by the United States and managed by the Department of the Interior, Bureau of
90 Reclamation.

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

95 (i) "Delivery Point" shall mean Funks Reservoir or Terminal Regulating
96 Reservoir, at which the Authority will make water supplies available to Reclamation outlined in
97 Exhibit D to this Agreement.

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

100 (k) "Downstream Facilities Capacity Share" shall mean a share expressed in
101 percentage based on the ratio of each Storage Partner's Base Facilities Capacity Interest to the

102 sum of the total Base Facilities Capacity Interest of all Storage Partners with Downstream
103 Facilities Capacity Share, specified in Exhibit [], as modified from time to time in accordance
104 with this Agreement.

105 (l) “Federal Facilities” shall mean all facilities owned by the United States,
106 including those listed in Exhibit C, as modified from time to time.

107 (m) “Fixed O&M Costs” shall mean all costs, calculated in accordance with
108 Generally Accepted Accounting Principles, incurred by the Sites Authority to administer,
109 operate, maintain, power, repair, replace, and, to the extent that reserves are available,
110 rehabilitate and improve, the Project. (ii) attributable to the conveyance and storage of water in
111 the Project Facilities excluding pumping costs, carriage costs, and power interference costs; (iii)
112 for the Sites Authority defense or other legal costs, including payment of claims, settlements or
113 judgments (iv) to meet regulatory requirements associated with the Project; including
114 administrative and legal costs of the Sites Authority, overhead, insurance, taxes (if any), fees of
115 auditors, accountants, attorneys or engineers and [insurance premiums], and including all other
116 reasonable and necessary costs of the Sites Authority (v) to replenish operating reserves of the
117 Project but excluding in all cases (A) depreciation, replacement and obsolescence charges or
118 reserves for such costs, (B) amortization of intangibles or other bookkeeping entries of a similar
119 nature, (C) costs of capital additions, replacements, betterments, extensions or improvements to
120 the Project, which under generally accepted accounting principles are chargeable to a capital
121 account or to a reserve for depreciation. Fixed O&M Costs include any and all costs and expense
122 that are not Fixed Project Costs or Variable O&M Costs that may accrue to the Sites Authority
123 after execution of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

166 ~~(+w)~~(z) “Secondary Delivery Point” shall mean a location designated by
167 Reclamation for delivery of Sites Water as described in Section 6(b). ~~the Colusa Basin Drain, at~~
168 ~~which the Authority will make water supplies available to Reclamation outlined in Exhibit D to~~
169 ~~this Agreement.~~

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

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

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

180 ~~(aa)~~(dd) _____ “Sites Water” shall mean the water that is appropriated under the
181 Sites Water Right.

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

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

187 ~~(dd)~~(gg) _____ “Spend Plan” means the Spend Plan in Exhibit A, as prepared and
188 amended in accordance with this Agreement.

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

191 ~~(ff)~~(ii) “Variable O&M Costs” shall mean the operation and maintenance costs
192 incurred by the Sites Authority in connection with the Sites Project in an amount that is

193 dependent upon and varies with the amount of Sites Water diverted, stored or released from the
194 Sites Project Facilities to the Storage Partners, including but not limited to the cost of power
195 (including pumping), carriage costs, losses, replacement and other costs, funding of reserves in
196 accordance with the Sites Authority policies and Generally Accepted Accounting Principles, and
197 wheeling and other conveyance costs for the use of Partner Facilities.

198 ~~(gg)(ii)~~ “Year” shall mean the period beginning on January 1 of each calendar
199 year and ending on the last day of December of such calendar year.

200 TERM OF AGREEMENT

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

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

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

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

215

FEDERAL PARTICIPATION IN THE SITES PROJECT

216

3. Pursuant to WIIN Act § 4007, Reclamation has the authority to participate up to

217

twenty-five (25) percent in State-led storage projects.

218

(a) Subject to appropriations and the terms of this Agreement, Reclamation

219

intends to commit to pay for and the Sites Authority hereby grants Reclamation ownership of a

220

[sixteen (16) percent] Base Facilities Capacity Interest, a [sixteen (16) percent] Downstream

221

Facilities Capacity Share and an ability to utilize up to sixteen (16) percent of Sites Water

222

originating from the Sacramento River provided however the Parties agree Reclamation bears the

223

risk of loss, shortfall or reduction in Sites Water.

224

(b) The Sites Authority shall allocate to each Storage Partner who requests to

225

participate in the funding and use of Downstream Facilities, a Downstream Facilities Capacity

226

Share in the amounts described in Exhibit [] and otherwise in accordance with Section [] of

227

this Agreement, provided such amount shall not be less than 16%.

228

(c) The Parties agree Reclamation intends to receive Sites Water for

229

operational flexibility and Anadromous Fish Benefits, as identified in the November 2022 North

230

of Delta Off-stream Storage Investigation Feasibility Report Addendum (Addendum), and shall

231

make reasonable and beneficial use of Sites Water consistent with all applicable law.

232

(d) Reclamation intends to execute contracts on a schedule to support Project

233

implementation with the Authority consistent with Reclamation's standard terms and conditions

234

and covering:

235

(i) Reclamation's acceptance of IL4 refuge water from the Sites

236

Authority at no cost to Reclamation, and conveyance of that water to the intended refuge(s).

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

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

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

244

245 **COSTS ASSOCIATED WITH THE SITES PROJECT**

246 4. All Project costs associated with this Agreement shall be compliant with Federal
247 law and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of
248 Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the
249 Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency
250 Act (31 U.S.C. § 1341 et seq.). Reclamation costs incurred after the Effective Date of this
251 Agreement shall only be credited, reimbursed or otherwise applied toward Reclamation's
252 participation in the Sites Project if they constitute Allowable Costs.

253 (a) Upon the determination of Completion of construction of the Sites Project,
254 Reclamation and the Authority will meet and confer within a reasonable time frame to complete
255 a final accounting of the Sites Project to determine and mutually agree upon final Capacity
256 Interest and Share allocation to Reclamation. The final Capacity Interest and Share attributable to
257 Reclamation's final investment will be documented in Exhibit E to this Agreement.

258 (b) The Parties agree:

259 (i) Pursuant to the Feasibility Memorandum of Understanding and
260 Pre-construction Memorandum of Agreement, Reclamation’s costs prior to the Effective Date of
261 this Agreement as set out in the Spend Plan are considered Allowable Costs and will be credited
262 to Reclamation’s share of costs associated with the Sites Project in accordance with this Article
263 4;

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

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

272 (1) O&M Costs: The Authority will be responsible for O&M
273 of the Sites Project. The Authority will identify the annual O&M Costs attributable to
274 Reclamation. Reclamation will pay the attributable portion within 90 days of receiving an
275 invoice, subject to available appropriations.

276 a. Fixed O&M Costs assigned annually to
277 Reclamation shall be proportionate to Reclamation’s Capacity Interest and Share and associated
278 Downstream Facilities Capacity.

279 b. Variable O&M Costs assigned annually to
280 Reclamation shall be proportionate to Reclamation’s use of is Capacity Interest and Share
281 associated Downstream Facilities Capacity.

282 (2) Use of Reclamation’s unused Downstream Facilities
283 Capacity Share: In the event a Storage Partner utilizes Reclamation’s Downstream Facilities
284 Capacity Share in the Dunnigan Pipeline, the Authority will develop and charge the Storage
285 Partner a rate for such use commensurate with the use, unless otherwise directed by Reclamation.
286 Proceeds received will be credited toward Reclamation’s fixed and variable O&M cost.

287 (3) In-kind Services: Reclamation’s In-kind Services will count
288 toward Reclamation’s contribution to Sites Project costs as described in this Agreement. In-kind
289 services shall only be credited if the scope, valuation methodology, and allocation basis are in
290 accordance with Exhibit H.

291 ~~(d)~~ ~~Non allowable Costs include, but are not limited to:~~

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

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

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

297 ~~(e)(c)~~ Within 90 days of this Agreement’s execution, Reclamation and the
298 Authority will develop Exhibit A, a Spend Plan containing mutually agreeable terms for
299 Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for
300 funds expended. The Parties agree that the Project’s forecasted and actual revenue and
301 expenditures in Exhibit A may be modified by the Authority to reflect real-time Project activities
302 without amendment to this Agreement.

303 ~~(f)(d)~~ Reclamation and the Authority will establish, at a minimum, quarterly
304 check-ins to monitor actual expenditures related to the Sites Project, and to discuss other items,

305 including but not limited to, funding and any additional agreements. If there is a deficiency in
306 expenditures under Exhibit A, Articles 9 and 10 shall apply.

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

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

318 5. Reclamation shall have first ~~refusal rights~~right of refusal for lease, purchase, and
319 defaulted interests as described in Exhibit I equivalent to the Storage Partners in the purchase of
320 Storage Partners' Sites Project Facilities Capacity Interest, Sites Water, or lease of other Storage
321 Partners' Capacity Interest and Share, subject to Article 16. Reclamation may elect to lease [or
322 sell] its Capacity Interest and Share, and the Authority will assist Reclamation to the extent
323 practicable.

324 **OPERATION OF SITES PROJECT FACILITIES**

325 6. The Sites Authority will operate and maintain the Sites Project Facilities in good
326 faith and in accordance with all applicable agreements and Article 20. The Sites Authority will

327 protect the Sites Water Right and will manage, control, and protect Sites Water in good faith and
328 in accordance with all applicable laws and regulations.

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

331 (b) Reclamation agrees to timely provide requests for Sites Water to be stored
332 in Reclamation's ~~Storage~~-Capacity Interest and Share and Sites Water to be released from
333 Reclamation's ~~Storage~~-Capacity Interest and Share to the Delivery Points. The Authority agrees
334 to take reasonable actions, consistent with law and this Agreement, to achieve Reclamation's
335 storage and release requests to the Delivery Points. Reclamation may specify a Secondary
336 Delivery Point(s) in its release request subject to the reasonable approval by the Sites Authority.
337 The Sites Authority will take actions reasonably practicable to assist Reclamation in conveying
338 their Sites Water to the Secondary Delivery Point(s). Reclamation shall bear all costs (monetary
339 or otherwise), the risk of loss, shortfall or reduction in the Sites Water between the Delivery
340 Point and Secondary Delivery Point(s). ~~At Reclamation's request and cost, including water loss~~
341 and risk of loss or shortfall, the Authority will take reasonable actions to convey Reclamation's
342 Sites Water to a Secondary Delivery Point.

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

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

353 (e) Reclamation's share of Sites Water diversions will be proportional with its
354 Capacity Interest and Share unless a lesser amount is requested by Reclamation.

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

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

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

369 (i) The Authority will deliver Sites Water to the Refuge Water Points of
370 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant
371 to the State of California's investment, without any cost to Reclamation. Reclamation will

372 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of
373 Delivery.

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

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

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

384 ~~(iv)~~(m) The Authority will be responsible for providing power to operate and
385 maintain the Sites Project Facilities and to convey Sites Water to the Delivery Points.

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

391 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

392 7. Reclamation will serve as the ESA Section 7 consultation lead for the initial
393 construction and water-related operation of Sites Project Facilities. Reclamation and the

394 Authority will meet and confer on future Project activities to determine the most appropriate
395 ESA consultation approach and lead agency consistent with applicable law and regulation.

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

401 (b) It is the understanding of the Parties that future reinitiation of consultation
402 on the operations of the Central Valley Project after an initial incidental take statement for the
403 effects from the operations of the Sites Project does not automatically require a reinitiation of
404 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of
405 consultation on the Sites Project to jointly review, among other things, the information before
406 each agency, potential approaches, and possible outcomes. In any consultation that has the
407 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the
408 Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries
409 Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while
410 avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the
411 specific changes contemplated for the Sites Project must meet one of the criteria in accordance
412 with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties will
413 cooperate in the preparation and negotiation of the reinitiation of consultation and the resulting
414 revised incidental take statement specific to the Sites Project.

415 (c) The Authority is responsible for environmental compliance with regard to
416 other applicable federal, state and local laws for the construction and operations of the Sites

417 Project. The Authority will document its compliance with these requirements, as appropriate, and
418 agrees to provide such documentation to Reclamation upon request.

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

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

430 **EXCUSED PERFORMANCE**

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

434 (a) Upon the occurrence of an event of Force Majeure, the Sites Authority
435 shall be excused from its obligations under this Agreement for the period during which it is
436 unable to comply with such obligations as a result of such event of Force Majeure; and
437 Reclamation shall be excused from its obligations under this Agreement for the period during
438 which it is unable to comply with such obligations as a result of the event of Force Majeure,
439 other than the payment of Project costs described in this Agreement, which obligations are not

440 subject to reduction or abatement, unless the event of Force Majeure specifically limits

441 Reclamation's ability to pay, in which case the parties will meet and confer to reach a mutually
442 acceptable timeline for payment.

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

448 **FAILURE OF TIMELY PAYMENT**

449
450 9. Pursuant to WIIN Act § 4007, Reclamation may ~~fund~~contribute up to twenty-five
451 (25) percent of the Sites Project. Reclamation shall diligently pursue funding sufficient to meet
452 its obligations under this Agreement in a timely manner.

453 (a) Fixed Project Costs for Completion.

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

460 (ii) The Parties will work diligently to execute appropriate funding
461 mechanisms, or amendments thereto, such that funding for Fixed Project Costs shall be made

462 available to the Authority one (1) year in advance of such Fixed Project Cost being incurred,
463 based on the Spend Plan.

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

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

469 a. Consistent with Article X [FUNDS TO BE PROVIDED], if
470 Reclamation has not made sufficient funding available to the Authority within 90 days of
471 issuance of the billing statement, the Sites Authority shall make written demand upon
472 Reclamation. The written demand shall identify the portion of Reclamation's Capacity Interest
473 and Share that is at risk of default, being that portion of Reclamation's Capacity Interest and
474 Share that has not yet been paid, based on the current Spend Plan and in accordance with this
475 Article ("~~Defaulted Delinquent Payment~~ Interest"). If such funding is not made available to the
476 Authority within an additional 90 days from the date of such demand, Reclamation is deemed to
477 have not made timely payment and is in default as it relates to the ~~Defaulted Delinquent Payment~~
478 Interest.

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

481 c. The other non-defaulting Storage Partners holding a
482 Capacity Interest and Share in the same Project Facilities (the Base Facilities and/or the
483 Downstream Facilities, as applicable) shall have a "right of first offer" to assume all or a portion
484 of Reclamation's Defaulted Interests and Reclamation's related financial obligations under this

485 Agreement, at a price mutually agreed between Reclamation and the Storage Partner purchasing
486 all or a portion of Reclamation's Defaulted Interests. In the event that more than one non-
487 defaulting Storage Partners wish to acquire the Defaulted Interests on the same terms, the
488 Defaulted Interests shall be apportioned pro rata based on the non-defaulting Storage Partner's
489 applicable Capacity Interest and Share in each of the Base Facilities and/or Downstream
490 Facilities unless the non-defaulting Storage Partners agree otherwise.

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

497 e. In the event that the Sites Authority is unable to enter into
498 an agreement with entities for the purchase of all or a portion of Reclamation's Defaulted Interest
499 and the assumption of the related obligations under this Agreement, the Defaulted Interests shall
500 be apportioned pro rata to Participants.

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

506 f.g. In the event that the Sites Authority sells all or a portion of
507 Reclamation's Defaulted Interest, such monies shall be distributed for application as follows: (a)

508 to the payment of, or (as the case may be) the reimbursement of the Authority for all reasonable
509 out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or
510 sustained by the Authority in connection with the sale of Reclamation's Defaulted Interest and
511 the collection of such monies by the Authority; (b) to the Sites Authority for Reclamation's full
512 amount of its share of costs under this Agreement (including any interest, expenses or other
513 obligations); and (c) the excess, if any, shall be paid to Reclamation.

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

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

519 (ii) The Parties will work diligently to execute appropriate funding
520 mechanisms, or amendments thereto, such that funding for Fixed Project Costs and Fixed O&M
521 Costs shall be made available to the Authority based on such costs anticipated to be incurred,
522 during the following one (1) year period.

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

527 (iv) Consistent with Article X [FUNDS TO BE PROVIDED], if
528 Reclamation has not made sufficient funding available to the Authority within 90 days of
529 issuance of the billing statement, the Sites Authority shall make written demand upon
530 Reclamation. The written demand shall identify the payment shortfall (Defaulted Amount). If

531 sufficient funding is not made available to the Authority within 90 days from the date of such
532 demand, Reclamation is deemed to have not made timely payment and is in default.

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

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

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

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

546 (c) Variable O&M Costs.

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

551 (ii) The Parties will work diligently to execute appropriate funding
552 mechanisms, or amendments thereto, such that funding for Variable O&M Costs shall be made

553 available to the Authority based on such costs anticipated to be incurred, during the following six
554 (6) month period.

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

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

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

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

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

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

577 suspended until its account is no longer in default.

578 (d) Reclamation's Fixed O&M Costs and Variable O&M Costs shall be

579 determined in accordance with Exhibit [].

580

581 (e) ~~Enforcement of Remedies~~

582 (i) ~~—In addition to the other remedies set forth in this Article (Dispute~~

583 ~~Resolution) in Article 10, upon the occurrence of an event of default delinquent payment in~~

584 ~~accordance with this Agreement, any Party shall be entitled to proceed to protect and enforce the~~

585 ~~rights in a court of competent jurisdiction, consistent with Federal law and without waiving the~~

586 ~~United States' sovereign immunity from suit, vested in such Party by this Agreement by such~~

587 ~~appropriate judicial proceeding as such Party shall deem most effectual, either by suit in equity~~

588 ~~or by action at law, to enforce any other legal or equitable right vested in such Party by this~~

589 ~~Agreement or by law. The provisions of this Agreement and the duties of each Party, their~~

590 ~~respective boards, officers or employees shall be enforceable by the other Parties by mandamus~~

591 ~~or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the~~

592 ~~losing Party paying all costs and attorney fees of the prevailing Party.~~

593 (ii) ~~—Without limiting the generality of the foregoing, the Sites~~

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

595 (1) ~~Injunction. By action or suit in equity to enjoin any acts or things~~

596 ~~which may be unlawful or in violation of the rights of the Sites Authority or Reclamation, as~~

597 ~~applicable.~~

598 ~~(2) Mandamus. By mandamus or other suit, action or proceeding at~~
599 ~~law or in equity to enforce its rights against the other Party hereto (and its board, officers and~~
600 ~~employees) and carry out its duties and obligations under the law and its covenants and~~
601 ~~agreements as provided herein.~~

602 **DISPUTE RESOLUTION**

603 10. Should any dispute arise concerning any provision(s) of this Agreement, or the
604 Parties' rights and obligations thereunder, the United States and the Authority shall meet and
605 confer in an attempt to informally resolve the dispute at the staff level. Both Parties agree to
606 work in good faith to resolve any disputes which may arise. If staff from the Parties are unable to
607 resolve the dispute, the dispute will be elevated to the Area Manager for Reclamation and
608 Executive Director or designee of the Sites Authority. If the Parties are unable to resolve the
609 dispute at this level, then the dispute will be elevated to the Regional Director of Reclamation
610 and the Executive Director of the Sites Authority. If the Parties are unable to resolve the dispute
611 at this level, the Parties may submit disputes to a third-party mediator agreed to by the Parties.
612 Either Party may seek relief in a court of competent jurisdiction, consistent with Federal law and
613 without waiving the United States' sovereign immunity from suit. Prior to the Sites Authority
614 commencing any legal action, or ~~Reclamation~~ the Contracting Officer referring any matter to the
615 Department of Justice, the ~~Party-party~~ shall provide to the other ~~Party-party~~ thirty (30) days'
616 written notice of the intent to take such action; *Provided*, That such notice shall not be required
617 where a delay in commencing an action would prejudice the interests of the Party that intends to
618 file suit. During the thirty (30) day notice period, the Parties shall meet and confer in an attempt

619 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
620 abridge any right or remedy that the Sites Authority or the United States may have.

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

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

626 OPINIONS AND DETERMINATIONS

627 11. Where the terms of this Agreement provide for actions to be based upon the
628 opinion or determination of either Party to this Agreement, said terms shall not be construed as
629 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
630 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
631 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
632 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
633 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
634 affect or alter the standard of judicial review applicable under Federal law to any opinion or
635 determination implementing a specific provision of Federal law embodied in statute or
636 regulation.

637 (a) The Contracting Officer shall have the right to make determinations
638 necessary to administer this Agreement that are consistent with the provisions of this Agreement,
639 the laws of the United States, and the rules and regulations promulgated by the Secretary. Such

640 determinations shall be made in consultation with the Authority to the extent reasonably
641 practicable.

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

646 **WATER MEASUREMENT**

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

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

656 **SEVERABILITY**

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

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

664 **HOLD HARMLESS**

665 14. (a) The Authority shall indemnify, defend, and hold harmless the United
666 States, its officers, agents, and employees from and against any and all claims, damages, losses,
667 liabilities, and expenses arising out of or resulting from the United States' work under this
668 agreement, or the design, operation, or maintenance of the Sites Project, provided the claims,
669 damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or
670 omissions on the part of the United States. Nothing herein shall be deemed to increase the
671 liability of Reclamation beyond the provisions of the Federal Tort Claims Act (28 U.S.C. 2671,
672 et seq.). This section is subject to available appropriations and shall not be construed as to allow
673 for violation of the Anti-Deficiency Act (31 U.S.C. 1341, et seq.). The Authority will not assert
674 that Reclamation, its Director, officers, agents or employees, are liable for damages of any nature
675 whatsoever arising out of any actions or omissions by the Authority, its directors, officers, agents
676 or employees, related to the Authority's performance of this Agreement, where such liability is
677 caused by an act, error or omission of the Authority, its director, officers, agents or employees.

678 (b) Reclamation shall defend, and hold harmless the Sites Authority, its
679 officers, agents, and employees from and against any and all claims, damages, losses, liabilities,
680 and expenses arising out of or resulting from the Unites States' control, carriage, handling, use,
681 disposal, or distribution of Sites Water beyond the Delivery Point [up to \$XXXXXXXXX
682 amount], except for any damage or claim arising in connection with (i) acts or omissions of the
683 Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of

684 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites
685 Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the
686 Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims
687 resulting from a malfunction of a Sites Project Facility. Nothing herein shall be deemed to
688 increase the liability of Reclamation beyond the provisions of the Federal Tort Claims Act (28
689 U.S.C. 2671, et seq.). This section is subject to available appropriations and shall not be
690 construed as to allow for violation of the Anti-Deficiency Act (31 U.S.C. 1341, et seq.).

691 **NOTICES**

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

697 **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

698 16. The expenditure or advance of any money or the performance of any obligation of
699 the United States under this Agreement shall be contingent upon appropriation or allotment of
700 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
701 obligations under this Agreement. No liability shall accrue to the United States in case funds are
702 not appropriated or allotted.

703 **OFFICIALS NOT TO BENEFIT**

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

707

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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(b) Reclamation shall not unreasonably withhold its consent to an assignment

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of the Authority's rights and obligations under this Agreement to a third party.

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BOOKS, RECORDS, AND REPORTS

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19. The Authority shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including the Authority's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.

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COMPLIANCE WITH LAWS

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

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

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(c) In protecting the interests of the United States, Reclamation's contracts and its contracting process must comply with all applicable Federal, state, tribal, and local laws.

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The Authority shall comply with all applicable Federal, State, and local laws, executive orders,

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rules and regulations applicable to its performance under this Agreement. These laws may

736 include environmental, civil rights, and cultural resources protection laws, among others, as well
737 as laws that may be later enacted.

738 **COMPLIANCE WITH CIVIL RIGHTS**

739 21. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
740 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
741 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
742 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
743 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
744 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
745 Interior and/or Bureau of Reclamation.

746 (b) These statutes prohibit any person in the United States from being
747 excluded from participation in, being denied the benefits of, or being otherwise subjected to
748 discrimination under any program or activity receiving financial assistance from the Bureau of
749 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
750 Agreement, the Authority agrees to immediately take any measures necessary to implement this
751 obligation, including permitting officials of the United States to inspect premises, programs, and
752 documents.

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

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

763

764 **FUNDS TO BE PROVIDED**

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

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

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

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

787 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

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797

AGREEMENT DRAFTING CONSIDERATIONS

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

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

805 (SEAL)

THE UNITED STATES OF AMERICA

806
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By: _____
Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation

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SITES AUTHORITY

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Attest:

By: _____
Chair, Board of Directors

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