

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
California

PARTNERSHIP AGREEMENT  
BETWEEN THE UNITED STATES  
AND THE SITES PROJECT AUTHORITY  
PROVIDING FOR  
FEDERAL PARTICIPATION IN  
THE SITES PROJECT

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Exhibit A: Spend Plan

Exhibit B: Sites Project Information, Capacity Interest and Facilities

Exhibit C: ~~Associated Reclamation-owned Facilities~~

Exhibit D: Water Measurement and Delivery Points List of Sites Authority Obligations

Exhibit E: ~~Capacity Interest~~

Exhibit F: Excess Capacity Contract

Exhibit G: Agreement Between the Department of Water Resources of the State of California, The United States Bureau of Reclamation, and The Sites Project Authority to Coordinate in the Operations of the Sites Reservoir Project

Exhibit H: Allowable Costs; Approval, Documentation, and Cost Allocation

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1           THIS AGREEMENT, effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective  
2   Date”) in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory  
3   thereof or supplementary thereto, including but not limited to, the Act of August 4, 1939 (53  
4   Stat. 1187; 43 U.S.C. Part 485), Sections 4007(c), 4007(e), 4007(f), and 4007(g) of the Water  
5   Infrastructure Improvements for the Nation Act (“WIIN Act”) of December 16, 2016 (Public  
6   Law 114-322, 130 Stat. 1865) between THE UNITED STATES OF AMERICA acting by and  
7   through the Bureau of Reclamation, hereinafter referred to as the “Contracting Officer” or  
8   “Reclamation”, and the SITES PROJECT AUTHORITY, hereinafter referred to as the  
9   “Authority” or the “Sites Authority”, duly organized, existing, and acting pursuant to the laws of  
10   California. The United States and the Authority are referred to collectively as the “Parties,” and  
11   individually as a “Party.”

12 WITNESSETH, that:

13 **EXPLANATORY RECITALS**

14 [1<sup>st</sup>] 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 [2<sup>nd</sup>] 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 [3<sup>rd</sup>] 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 [4<sup>th</sup>] 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 [5<sup>th</sup>] 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 [6<sup>th</sup>] 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 [7<sup>th</sup>] 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”<sup>2,2</sup> 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 [8<sup>th</sup>] 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 [9<sup>th</sup>] 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 [10<sup>th</sup>] 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 (i) the Sites Project Facilities or other  
71 facilities available to all Storage Partners including those listed as Base Facilities in Exhibit [ ],  
72 B, and (ii) the Federal Facilities utilized by the Sites Authority to convey Sites Water to, or from,  
73 the Sites Project Facilities~~as modified from time to time.~~

74 (d) "Base Facilities Capacity Interest" shall mean (i) the undivided capacity  
75 right ~~of each Storage Partner~~ to store, convey and divert Sites Water in each of the Base Sites  
76 Project Facilities granted by the Sites Authority, and (ii) the right to utilize Federal Facilities  
77 through the Sites Authority to convey Sites Water for the Sites Project ~~and owned by the Storage~~  
78 ~~Partner pursuant to the terms of the Benefits and Obligations Contract and this Agreement, and~~

79 ~~in the pro-rata share~~ as set out for each Storage Partner in Exhibit ~~A~~, B, as modified from time  
80 to time and subject to the Sites Water Right, applicable law and governmental approvals.

81 (e) "Capacity Interest and Share" shall mean (i) in the case of the Base  
82 Facilities, the Base Facilities Capacity Interest; and (ii) in the case of the Downstream Facilities,  
83 the Downstream Facilities Capacity Share, or ~~both~~ either of them as the context requires.

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

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

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

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

100 (j) "Downstream Facilities" shall mean (i) the Sites Project Facilities or other  
101 facilities that are utilized by select Storage Partners listed as Downstream Facilities in Exhibit

102 ~~[ ]~~, B, and (ii) the Federal Facilities utilized by the Sites Authority to convey Sites Water to, or  
103 ~~from, the Sites Project Facilities as modified from time to time.~~

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

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

111 (m) "Fixed O&M Costs" shall mean all costs, calculated in accordance with  
112 Generally Accepted Accounting Principles, incurred by the Sites Authority to administer,  
113 operate, and maintain, the Sites Project that are not directly related to the amount of water  
114 conveyed into or released from Sites Reservoir. Fixed O&M Costs include all operating and  
115 maintenance costs that are not Variable O&M Costs, including repair and replacement costs not  
116 charged to a capital account, insurance and contributions to reasonably required reserves. Fixed  
117 O&M Costs exclude power, repair, replace, and, to the extent that reserves are available,  
118 rehabilitate and improve, the Project. (ii) attributable to the conveyance and storage of water in  
119 the Project Facilities excluding pumping costs, carriage costs, and power interference costs; (iii)  
120 for the Sites Authority defense or other legal costs, including payment of claims, settlements or  
121 judgments (iv) to meet regulatory requirements associated with the Project; including  
122 administrative and legal costs of the Sites Authority, overhead, insurance, taxes (if any), fees of  
123 auditors, accountants, attorneys or engineers and [insurance premiums], and including all other  
124 reasonable and necessary costs of the Sites Authority (v) to replenish operating reserves of the

125 ~~Project but excluding in all cases (A) depreciation, replacement and obsolescence charges or~~  
126 ~~reserves for such costs, and (B) amortization of intangibles or other bookkeeping entries of a~~  
127 ~~similar nature, (C) costs of capital additions, replacements, betterments, extensions or~~  
128 ~~improvements to the Project, which under generally accepted accounting principles are~~  
129 ~~chargeable to a capital account or to a reserve for depreciation. Fixed O&M Costs include any~~  
130 ~~and all costs and expense expenditures that are not Fixed Project Costs or Variable O&M Costs~~  
131 ~~that may accrue to are incurred by 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 Sites Project, and (ii) individual repair, replacement, rehabilitation,  
134 improvement, or regulatory compliance activities incurred after completion of the Sites  
135 Project/Owned Facilities to the extent not covered by Fixed O&M Costs.

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

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

145 ~~(o)(q)~~ “Good Industry Practice” shall mean the exercise of the degree of skill,  
146 diligence, prudence and foresight which would reasonably and ordinarily be expected from a  
147 skilled and experienced designer, engineer, constructor, supplier, operator or maintenance

148 provider, as applicable, operating in the United States under the same or similar circumstances  
149 and conditions, seeking in good faith to comply with its contractual obligations, this Agreement  
150 and all Applicable Law and Governmental Approvals in conformance with applicable  
151 professional engineering principles, construction, operations and maintenance practices generally  
152 accepted as standards of the industry in the State.

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

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

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

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

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

166 ~~(u)~~ “Participants” ~~means shall mean~~ the parties listed in Exhibit ~~[ ]~~, B, as  
167 modified from time to time.

168 ~~(v)~~ “Project Costs” shall mean

169 ~~(w)~~(y) “Project Use Energy” shall mean the electrical capacity, energy, and  
170 associated ancillary service components required to provide the minimum electrical service using

171 the most economical methods needed to operate and/or maintain Reclamation-owned facilities in  
172 conformance with project authorization.

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

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

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

184 ~~(y)~~(cc) “Sites Project” ~~or “Project”~~ shall mean the ~~Sites~~ Project Facilities  
185 managed, owned and operated by the Sites Authority. Sites Project Facilities are outlined in  
186 Exhibit B to this Agreement.

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

189 ~~(aa)~~(ee) \_\_\_\_\_ “Sites Water” shall mean the water that is appropriated under the  
190 Sites Water Right.

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

193 ~~(ee)~~(gg) \_\_\_\_\_ “Storage Partner” shall mean the governmental agencies, water  
194 organizations, and others who have funded and received ~~Sites Project Facilities~~ Capacity Interest  
195 and Share and the associated Sites Water.

196 ~~(dd)~~(hh) \_\_\_\_\_ “Spend Plan” means the Spend Plan in Exhibit A, as prepared and  
197 amended in accordance with this Agreement.

198 ~~(ee)~~(ii) “Water Purveyor” shall mean contractors with which Reclamation has  
199 agreements to convey water to refuges.

200 ~~(ff)~~(jj) \_\_\_\_\_ “Variable O&M Costs” shall mean the operation and maintenance costs  
201 incurred by the Sites Authority in connection with the Sites Project in an amount that is  
202 dependent upon and varies with the amount of Sites Water diverted, stored or released from the  
203 Sites Project Facilities to the Storage Partners, including but not limited to the cost of power  
204 (including pumping), carriage costs, losses, replacement and other costs, funding of reserves in  
205 accordance with the Sites Authority policies and Generally Accepted Accounting Principles, and  
206 wheeling and other conveyance costs for the use of Partner Facilities.

207 ~~(gg)~~(kk) \_\_\_\_\_ “Year” shall mean the period beginning on January 1 of each  
208 calendar year and ending on the last day of December of such calendar year.1

209 **TERM OF AGREEMENT**

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

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

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

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

224 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

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

227 (a) Subject to appropriations and the terms of this Agreement, Reclamation  
228 intends to commit to pay for and the Sites Authority hereby grants Reclamation ownership of a  
229 [sixteen (16) percent] Base Facilities Capacity Interest, a [sixteen (16) percent] Downstream  
230 Facilities Capacity Share and an ability to utilize up to sixteen (16) percent of Sites Water  
231 originating from the Sacramento River provided however the Parties agree Reclamation bears the  
232 risk of loss, shortfall or reduction in Sites Water.

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

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

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

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

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

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

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

253

254 **COSTS ASSOCIATED WITH THE SITES PROJECT**

255 4. All Project costs associated with this Agreement shall be compliant with Federal  
256 law and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of  
257 Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the  
258 Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency

259 Act (31 U.S.C. § 1341 et seq.). Reclamation costs incurred after the Effective Date of this  
260 Agreement shall only be credited, reimbursed or otherwise applied toward Reclamation's  
261 participation in the Sites Project if they constitute Allowable Costs.

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

267 (b) The Parties agree:

268 (i) Pursuant to the Feasibility Memorandum of Understanding and  
269 Pre-construction Memorandum of Agreement, Reclamation's costs prior to the Effective Date of  
270 this Agreement as set out in the Spend Plan are considered Allowable Costs and will be credited  
271 to Reclamation's share of costs associated with the Sites Project in accordance with this Article  
272 4;

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

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

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

285 a. Fixed O&M Costs assigned annually to  
286 Reclamation shall be proportionate to Reclamation's Capacity Interest and Share and associated  
287 Downstream Facilities Capacity.

288 b. Variable O&M Costs assigned annually to  
289 Reclamation shall be proportionate to Reclamation's use of is Capacity Interest and Share  
290 associated Downstream Facilities Capacity.

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

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

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

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

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

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

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

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

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

326

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

327

5. Reclamation shall have first ~~refusal rights~~right of refusal for lease, purchase, and

328

defaulted interests as described in Exhibit I equivalent to the Storage Partners in the purchase of

329

Storage Partners' Sites Project Facilities Capacity Interest, Sites Water, or lease of other Storage

330

Partners' Capacity Interest and Share, subject to Article 16. Reclamation may elect to lease [or

331

sell] its Capacity Interest and Share, and the Authority will assist Reclamation to the extent

332

practicable.

333

**OPERATION OF SITES PROJECT FACILITIES**

334

6. The Sites Authority will operate and maintain the Sites Project Facilities in good

335

faith and in accordance with all applicable agreements and Article 20. The Sites Authority will

336

protect the Sites Water Right and will manage, control, and protect Sites Water in good faith and

337

in accordance with all applicable laws and regulations.

338

(a) Sites Project Facilities will be operated in a manner that avoids harm to the

339

Central Valley Project, its water rights, and Federal Facilities.

340

(b) Reclamation agrees to timely provide requests for Sites Water to be stored

341

in Reclamation's ~~Storage~~ Capacity Interest and Share and Sites Water to be released from

342

Reclamation's ~~Storage~~ Capacity Interest and Share to the Delivery Points. The Authority agrees

343

to take reasonable actions, consistent with law and this Agreement, to achieve Reclamation's

344

storage and release requests to the Delivery Points. Reclamation may specify a Secondary

345

Delivery Point(s) in its release request subject to the reasonable approval by the Sites Authority.

346

The Sites Authority will take actions reasonably practicable to assist Reclamation in conveying

347

their Sites Water to the Secondary Delivery Point(s). Reclamation shall bear all costs (monetary

348 or otherwise), the risk of loss, shortfall or reduction in the Sites Water between the Delivery  
349 Point and Secondary Delivery Point(s). At Reclamation's request and cost, including water loss  
350 and risk of loss or shortfall, the Authority will take reasonable actions to convey Reclamation's  
351 Sites Water to a Secondary Delivery Point.

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

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

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

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

369 (g) Reclamation may not opt out of necessary Capital Improvements to Sites  
370 Project Facilities required to maintain initial Project functions and that provide benefits initially

371 contemplated for the Project. If Reclamation is subject to Capital Improvements of the Sites  
372 Project Facilities, Reclamation's benefits will be commensurate with Reclamation's costs.

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

378 (i) The Authority will deliver Sites Water to the Refuge Water Points of  
379 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant  
380 to the State of California's investment, without any cost to Reclamation. Reclamation will  
381 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of  
382 Delivery.

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

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

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

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

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

400 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

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

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

410 (b) It is the understanding of the Parties that future reinitiation of consultation  
411 on the operations of the Central Valley Project after an initial incidental take statement for the  
412 effects from the operations of the Sites Project does not automatically require a reinitiation of  
413 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of  
414 consultation on the Sites Project to jointly review, among other things, the information before

415 each agency, potential approaches, and possible outcomes. In any consultation that has the  
416 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the  
417 Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries  
418 Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while  
419 avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the  
420 specific changes contemplated for the Sites Project must meet one of the criteria in accordance  
421 with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties will  
422 cooperate in the preparation and negotiation of the reinitiation of consultation and the resulting  
423 revised incidental take statement specific to the Sites Project.

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

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

434 (e) Reclamation has completed compliance with the National Environmental  
435 Policy Act of 1969, as amended for the construction and operations of the Sites Project. The  
436 Parties agree to move expeditiously, meet and confer as necessary, and have staff resources

437 dedicated to ensuring that any changes to the Project’s NEPA compliance is implemented  
438 without delay throughout the duration of construction.

439 **EXCUSED PERFORMANCE**

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

443 (a) Upon the occurrence of an event of Force Majeure, the Sites Authority  
444 shall be excused from its obligations under this Agreement for the period during which it is  
445 unable to comply with such obligations as a result of such event of Force Majeure; and  
446 Reclamation shall be excused from its obligations under this Agreement for the period during  
447 which it is unable to comply with such obligations as a result of the event of Force Majeure,  
448 other than the payment of Project costs described in this Agreement, which obligations are not  
449 subject to reduction or abatement, unless the event of Force Majeure specifically limits  
450 Reclamation’s ability to pay, in which case the parties will meet and confer to reach a mutually  
451 acceptable timeline for payment.

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

457 **FAILURE OF TIMELY PAYMENT**

458

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

462 (a) Fixed Project Costs for Completion.

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

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

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

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

478 a. Consistent with Article X [FUNDS TO BE PROVIDED], if  
479 Reclamation has not made sufficient funding available to the Authority within 90 days of  
480 issuance of the billing statement, the Sites Authority shall make written demand upon  
481 Reclamation. The written demand shall identify the portion of Reclamation's Capacity Interest



504 enter into an agreement with such entities for the purchase of all or a portion of Reclamation's  
505 Defaulted Interests and the assumption of the related obligations under this Agreement.

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

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

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

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

524 (i) The Authority will provide Reclamation with an estimated billing  
525 statement for Reclamation's share of Fixed Project Costs and Fixed O&M Costs based on such

526 costs anticipated to be incurred during the one (1) year period starting two (2) years after the date  
527 of the billing statement.

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

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

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

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

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

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

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

555                           (c)       Variable O&M Costs.

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

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

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

568                           a.       Consistent with Article X [FUNDS TO BE PROVIDED], if  
569 Reclamation has not made sufficient funding available to the Authority within 30 days of  
570 issuance of the billing statement, the Sites Authority shall make written demand upon  
571 Reclamation. The written demand shall identify the payment shortfall (“Defaulted Amount”). If

572 sufficient funding is not made available to the Authority within 30 days from the date of such  
573 demand, Reclamation is deemed to have not made timely payment and is in default.

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

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

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

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

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

589

590 (e) ~~Enforcement of Remedies~~

591 ~~(i)~~—In addition to the other remedies set forth ~~in this Article (Dispute~~  
592 ~~Resolution)~~in Article 10, upon the occurrence of an event of ~~default~~delinquent payment in  
593 accordance with this Agreement, any Party shall be entitled to proceed to protect and enforce the  
594 rights in a court of competent jurisdiction, consistent with Federal law and without waiving the

595 ~~United States' sovereign immunity from suit, vested in such Party by this Agreement by such~~  
596 ~~appropriate judicial proceeding as such Party shall deem most effectual, either by suit in equity~~  
597 ~~or by action at law, to enforce any other legal or equitable right vested in such Party by this~~  
598 ~~Agreement or by law. The provisions of this Agreement and the duties of each Party, their~~  
599 ~~respective boards, officers or employees shall be enforceable by the other Parties by mandamus~~  
600 ~~or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the~~  
601 ~~losing Party paying all costs and attorney fees of the prevailing Party.~~

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

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

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

611 **DISPUTE RESOLUTION**

612 10. Should any dispute arise concerning any provision(s) of this Agreement, or the  
613 Parties' rights and obligations thereunder, the United States and the Authority shall meet and  
614 confer in an attempt to informally resolve the dispute at the staff level. Both Parties agree to  
615 work in good faith to resolve any disputes which may arise. If staff from the Parties are unable to  
616 resolve the dispute, the dispute will be elevated to the Area Manager for Reclamation and

617 Executive Director or designee of the Sites Authority. If the Parties are unable to resolve the  
618 dispute at this level, then the dispute will be elevated to the Regional Director of Reclamation  
619 and the Executive Director of the Sites Authority. If the Parties are unable to resolve the dispute  
620 at this level, the Parties may submit disputes to a third-party mediator agreed to by the Parties.  
621 Either Party may seek relief in a court of competent jurisdiction, consistent with Federal law and  
622 without waiving the United States' sovereign immunity from suit. Prior to the Sites Authority  
623 commencing any legal action, or ~~Reclamation~~ the Contracting Officer referring any matter to the  
624 Department of Justice, the ~~Party-party~~ shall provide to the other ~~Party-party~~ thirty (30) days'  
625 written notice of the intent to take such action; *Provided*, That such notice shall not be required  
626 where a delay in commencing an action would prejudice the interests of the Party that intends to  
627 file suit. During the thirty (30) day notice period, the Parties shall meet and confer in an attempt  
628 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or  
629 abridge any right or remedy that the Sites Authority or the United States may have.

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

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

### 635 **OPINIONS AND DETERMINATIONS**

636 11. Where the terms of this Agreement provide for actions to be based upon the  
637 opinion or determination of either Party to this Agreement, said terms shall not be construed as  
638 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

639 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly  
640 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
641 or unreasonable opinion or determination. Each opinion or determination by either Party shall be  
642 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall  
643 affect or alter the standard of judicial review applicable under Federal law to any opinion or  
644 determination implementing a specific provision of Federal law embodied in statute or  
645 regulation.

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

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

655 **WATER MEASUREMENT**

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

659 (a) Prior to Completion, the Authority shall ensure that the water measuring  
660 devices are installed and operating properly. The Authority will be responsible for installing,

661 operating, maintaining, and repairing all such measurement devices. The equipment and methods  
662 used to make such measurement shall be in accordance with Good Industry Practices. Upon  
663 request of the Contracting Officer, the accuracy of such measurements will be investigated by  
664 the Sites Authority and any errors appearing therein will be corrected.

665 **SEVERABILITY**

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

673 **HOLD HARMLESS**

674 14. (a) The Authority shall indemnify, defend, and hold harmless the United  
675 States, its officers, agents, and employees from and against any and all claims, damages, losses,  
676 liabilities, and expenses arising out of or resulting from the United States' work under this  
677 agreement, or the design, operation, or maintenance of the Sites Project, provided the claims,  
678 damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or  
679 omissions on the part of the United States. Nothing herein shall be deemed to increase the  
680 liability of Reclamation beyond the provisions of the Federal Tort Claims Act (28 U.S.C. 2671,  
681 et seq.). This section is subject to available appropriations and shall not be construed as to allow  
682 for violation of the Anti-Deficiency Act (31 U.S.C. 1341, et seq.). The Authority will not assert

683 that Reclamation, its Director, officers, agents or employees, are liable for damages of any nature  
684 whatsoever arising out of any actions or omissions by the Authority, its directors, officers, agents  
685 or employees, related to the Authority's performance of this Agreement, where such liability is  
686 caused by an 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 [up to \$XXXXXXXX  
691 amount], except for any damage or claim arising in connection with (i) acts or omissions of the  
692 Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of  
693 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites  
694 Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the  
695 Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims  
696 resulting from a malfunction of a Sites Project Facility. Nothing herein shall be deemed to  
697 increase the liability of Reclamation beyond the provisions of the Federal Tort Claims Act (28  
698 U.S.C. 2671, et seq.). This section is subject to available appropriations and shall not be  
699 construed as to allow for violation of the Anti-Deficiency Act (31 U.S.C. 1341, et seq.).

700 **NOTICES**

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

706

**CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

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

712

**OFFICIALS NOT TO BENEFIT**

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

716

**ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

717           18.     (a)     The provisions of this Agreement shall apply to and bind the successors  
718 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or  
719 interest therein by either Party shall be valid until approved in writing by the other Party.  
720                 (b)     Reclamation shall not unreasonably withhold its consent to an assignment  
721 of the Authority’s rights and obligations under this Agreement to a third party.

722

**BOOKS, RECORDS, AND REPORTS**

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

733

**COMPLIANCE WITH LAWS**

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

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

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

747

**COMPLIANCE WITH CIVIL RIGHTS**

748           21.   (a)    The Authority shall comply with Title VI of the Civil Rights Act of 1964  
749 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
750 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
751 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
752 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
753 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
754 Interior and/or Bureau of Reclamation.

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

762                   (c)    The Authority makes this agreement in consideration of and for the  
763 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
764 Federal financial assistance extended after the date hereof to the Authority by the Bureau of

765 Reclamation, including installment payments after such date on account of arrangements for  
766 Federal financial assistance which were approved before such date. The Authority recognizes  
767 and agrees that such Federal assistance will be extended in reliance on the representations and  
768 agreements made in this article and that the United States reserves the right to seek judicial  
769 enforcement thereof.

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

772

773

**FUNDS TO BE PROVIDED**

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

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

782 (b) Upon execution of this Agreement, funds for any additional funds not  
783 required by the Spend Plan may be transmitted to the Authority, provided that any such advance  
784 of funds shall be released in as many installments as the Contracting Officer deems necessary.  
785 The Authority may request an advance of funds in addition to funds required by the Spend Plan;  
786 provided that, the Authority must provide the Contracting Officer written justification for the  
787 immediate need for the funds requested, including how the funds would be applied, and the  
788 Contracting Officer shall have the final determination of how and when installments are  
789 transmitted.

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

796 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

805 **AGREEMENT DRAFTING CONSIDERATIONS**

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

