

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

TABLE OF CONTENTS

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble.....	1
	Recitals.....	2
1	Definitions.....	4
2	Term of Agreement.....	11
3	Federal Participation in the Sites Project.....	12
4	Costs Associated with the Sites Project.....	1315
5	Lease or Sale of Storage Capacity, Conveyance Capacity, and Sites Water	1622
6	Operation of Sites Reservoir.....	1622
7	Environmental and Cultural Coverage and Compliance.....	1925
8	Dispute Resolution.....	2127
9	Opinions and Determinations.....	3233
10	Water Measurement.....	3334
11	Severability.....	3335
12	Hold Harmless.....	3435
13	Notices	3536
14	Contingent on Appropriation or Allotment of Funds.....	3536
15	Officials Not to Benefit.....	3537
16	Assignment Limited - Successors and Assigns Obligated.....	3637
17	Books, Records, and Reports.....	3637
18	Compliance with Laws.....	3637
19	Compliance with Civil Rights.....	3738

20 Medium for Transmitting Payments~~38~~~~39~~

21 Agreement Drafting Considerations39

Signature Page.....21

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 [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”²) 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, 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 Sites Project Facilities or other facilities
71 available to all Storage Partners listed as Base Facilities in Exhibit B.

72 (d) "Base Facilities Capacity Interest" shall mean (i) the undivided capacity
73 right to store, convey and divert Sites Water in each of the Sites Owned Facilities granted by the
74 Sites Authority, and (ii) the ability to utilize Federal Facilities and Partner Facilities through the
75 Sites Authority to convey and divert Sites Water for the Sites Project, in the pro-rata share set out
76 for each Storage Partner in Exhibit B, subject to the Sites Water Right, applicable law and
77 governmental approvals.

78 (e) "Capacity Interest" shall mean (i) in the case of the Base Facilities, the
79 Base Facilities Capacity Interest; and (ii) in the case of the Downstream Facilities, the
80 Downstream Facilities Capacity Interest, or either of them as the context requires.

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

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

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

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

97 (j) "Downstream Facilities" shall mean the Sites Project Facilities or other
98 facilities that are utilized by select Storage Partners listed as Downstream Facilities in Exhibit B.

99 (k) "Downstream Facilities Capacity Interest" shall mean the undivided
100 capacity right to convey Sites Water through Downstream Facilities for the delivery of Sites

101 Water, consistent with this Agreement and the Partner Agreements, in the pro-rata share set out
102 for each Storage Partner in Exhibit B, subject to the Sites Water Right, applicable law and
103 governmental approvals.

104 (l) "Federal Facilities" shall mean all facilities owned by the United States
105 and utilized by the Sites Project, as listed in Exhibit B.

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

124 ~~chargeable to a capital account or to a reserve for depreciation. Fixed O&M Costs include any~~
125 ~~and all costs and expense expenditures that are not Fixed Project Costs or Variable O&M Costs~~
126 ~~that may accrue to are incurred by the Sites Authority after execution of this Agreement.~~

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

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

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

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

146 professional engineering principles, construction, operations and maintenance practices generally
147 accepted as standards of the industry in the State.

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

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

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

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

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

161 (w) “Participants” shall mean the parties listed as Participants in Exhibit B.

162 ~~(+)~~(x) “Partner Agreements” shall mean any agreement entered into between the
163 Sites Authority and another entity in accordance with which the Sites Authority has the right to
164 divert, release and convey Sites Water to or from the Sites Project, as listed in Exhibit B.

165 ~~(+)~~(y) “Partner Facilities” shall mean any facilities used by the Sites Authority to
166 convey Sites Water to, or from, the Sites Owned Facilities in accordance with the Partner
167 Agreements, and as further described in Exhibit B (excluding the Federal Facilities).

168 ~~(w)~~(z) “Project Assets” shall mean all of the tangible and intangible assets
169 relating to the Sites Project, including (i) the Sites Owned Facilities, (ii) all real property
170 determined by the Sites Authority to be required for construction or operation of the Sites
171 Project, (iii) rights over the Sites Project Facilities in the form of license, right-of-way or
172 otherwise, (iv) tangible assets such as foundations, buildings, pavements, works, and equipment,
173 (v) the Sites Water Right, and (vi) all governmental approvals.

174 ~~(a)~~(aa) “Project Costs” shall mean the sum of Fixed O&M Costs, Fixed Project
175 Costs and Variable O&M Costs payable by or credited to Reclamation under this Agreement, or
176 each of them, as the context requires.

177 ~~(b)~~(bb) “Project Use Energy” shall mean the electrical capacity, energy, and
178 associated ancillary service components required to provide the minimum electrical service using
179 the most economical methods needed to operate and/or maintain Reclamation-owned facilities in
180 conformance with project authorization.

181 ~~(x)~~(cc) “Sites Owned Facilities” shall mean the physical infrastructure and capital
182 improvements for the Sites Project owned by the Sites Authority, including dams, reservoir(s),
183 pipelines, pump stations, and other facilities necessary or appropriate for providing water supply
184 and storage including the facilities listed as Sites Owned Facilities in Exhibit B, excluding
185 Partner Facilities, Federal Facilities and the real property required for the Sites Project.

186 ~~(y)~~(dd) “Sites Project Facilities” shall mean collectively the Sites Owned
187 Facilities, Federal Facilities and Partner Facilities, or any of them as the context requires.

188 ~~(z)~~(ee) “Secondary Delivery Point” shall mean a location designated by
189 Reclamation for delivery of Sites Water as described in Section 6(b).

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

195 ~~(bb)~~(gg) _____ “Sites Project” ~~or “Project”~~ shall mean the -Sites Project Facilities
196 managed, owned and operated by the Sites Authority. Sites Project Facilities are outlined in
197 Exhibit B to this Agreement.

198 ~~(ee)~~(hh) _____ “Sites Reservoir” shall mean the 1.5 million acre-feet off-stream
199 storage reservoir near Maxwell, California.

200 ~~(dd)~~(ii) “Sites Water” shall mean the water that is appropriated under the Sites
201 Water Right.

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

204 ~~(ff)~~(kk) “Storage Partner” shall mean the governmental agencies, water
205 organizations, and others who have funded and received Capacity Interest and the associated
206 Sites Water.

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

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

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

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

218 (j)(oo) “Year” shall mean the period beginning on January 1 of each calendar
219 year and ending on the last day of December of such calendar year.

220 TERM OF AGREEMENT

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

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

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

231 (c) This Agreement may be modified or amended upon written mutual
232 agreement of the Parties.- The Parties agree that any exhibit attached to this Agreement may be
233 amended, updated, or replaced from time to time without requiring a formal amendment to this
234 Agreement, provided that: (1) such amendment, update, or replacement is documented in writing

235 and signed by authorized representatives of the Parties; (2) the written amendment expressly
236 references this Agreement and the specific exhibit being amended; (3) upon execution by the
237 Parties, the amended exhibit shall automatically replace the prior version and be deemed
238 incorporated into this Agreement as of the effective date stated in the amended exhibit; and (4)
239 the amended exhibit shall not modify or affect any other terms or conditions of this Agreement.

240 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

241 3. The Authority and Reclamation agree that Reclamation is granted, and
242 Reclamation shall own a [16% Base Facilities Capacity Interest and 16% Downstream Facilities
243 Capacity Interest and Share] of the Sites Project and an ability to utilize a proportionate share of
244 Sites Water originating from the Sacramento River as described in this Agreement subject to the
245 following:

246 (a) Reclamation commits to the Authority the \$798 million in federal funds
247 appropriated prior to the Effective Date of this Agreement towards a portion of the grant and
248 ownership of the [Base Facilities Capacity Interest and Downstream Facilities Capacity Share].

249 (b) After the Effective Date of this Agreement, Reclamation shall diligently
250 pursue, within its authorities, the remaining funds necessary to pay for the Actual Costs
251 attributable to 16% of [Base Facilities Capacity Interest and 16% of Downstream Facilities
252 Capacity Share] as further described in Article 9 of the Agreement.

253 (c) Reclamation's 16% of [Base Facilities Capacity Interest and 16%
254 Downstream Facilities Capacity Share] shall be subject to Article 9 of the Agreement.

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COSTS ASSOCIATED WITH THE SITES PROJECT

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

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

(b) The Parties agree:

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

(ii) Reclamation's Allowable Costs after the Effective Date of this Agreement as set out in the Spend Plan will be credited to Reclamation's share of Project Costs in accordance with this Agreement.

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

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

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

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

290 (2) Use of Reclamation's unused Downstream Facilities
291 Capacity ShareInterest: In the event a Storage Partner utilizes Reclamation's Downstream
292 Facilities Capacity Share-Interest in the Dunnigan Pipeline, the Authority will develop and
293 charge the Storage Partner a rate for such use commensurate with the use, unless otherwise
294 directed by Reclamation. Proceeds received will be credited toward Reclamation's fixed and
295 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 ~~(c)~~ ~~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 ~~(d)~~(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 ~~(e)~~(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 ~~(e)~~(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 in the Sites Water between the Delivery Point and Secondary

349 Delivery Point(s).

350 (c) The Authority will operate the Project so as to maximize the water supply

351 and water supply related environmental benefits while continuing to provide the flood control

352 and recreational benefits. The diversion of Sites Water to storage will take priority over the

353 release of water except in cases of severe flooding. The Authority, in good faith, may

354 temporarily discontinue or reduce the conveyance of Sites Water to, and release of Sites Water

355 from, the Sites Project Facilities in various emergency and non-emergency situations to protect

356 life and property as part of the flood control benefit.

357 (e)(d) Reclamation shall make reasonable and beneficial use of Sites Water

358 consistent with this Agreement.

359 (d)(e) The Parties agree Reclamation bears the risk of loss or reduction in Sites

360 Water on a pro-rata and substantially similar basis as other Storage

361 Partners.

362 (e)(f) The Authority will operate and maintain the Project in full compliance with

363 the terms of this Agreement and in such a manner that the Project remains in good and efficient

364 condition, subject to exercise of discretion to fund and carry out Capital Improvements.

365 (f)(g) Reclamation's share of Sites Water diversions will be proportional with its

366 Capacity Interest and Share unless a lesser amount is requested by Reclamation.

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

372 ~~(h)~~(i) Reclamation may not opt out of necessary Capital Improvements to Sites
373 Project Facilities required to maintain initial Project functions and that provide benefits initially
374 contemplated for the Project. If Reclamation is subject to Capital Improvements of the Sites
375 Project Facilities, Reclamation's benefits will be commensurate with Reclamation's costs.

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

381 ~~(j)~~(k) The Authority will deliver Sites Water to the Refuge Water Points of
382 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant
383 to the State of California's investment, without any cost to Reclamation. Reclamation will
384 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of
385 Delivery.

386 ~~(k)~~(l) The Parties, along with the California Department of Water Resources,
387 will execute Exhibit G to identify coordination processes for Sites Water diversions and releases.
388 The Parties, along with the California Department of Water Resources, will consider changes

389 necessary to represent conditions at the time of Completion and execute an amendment to
390 Exhibit G as needed.

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

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

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

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

403 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

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

408 (a) The Parties agree that Reclamation will consult on the operation of the
409 Sites Project as ESA Section 7 lead, treating the operation of the Sites Project as a distinct
410 component related to the Long Term Operations of the State and Federal Projects. Reclamation

411 intends to seek an incidental take statement specific to effects from the operation of the Sites
412 Project.

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

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

431 (d) Through the development, execution, and implementation of a
432 Programmatic Agreement to address adverse effects to historic properties, Reclamation will
433 remain in compliance with Section 106 of the National Historic Preservation Act of 1966, as

434 amended for the construction of the Sites Project. The Parties agree to meet and confer as
435 necessary to ensure the Project's Section 106 construction compliance is timely implemented
436 throughout the duration of construction.

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

442 **EXCUSED PERFORMANCE**

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

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

455 (b) Any excuse of obligations in accordance with this Article is subject to the
456 proviso that, upon obtaining knowledge of an event of Force Majeure, such Party: (a) promptly

457 notifies the Sites Authority and/or the other Party of the event of Force Majeure; (b) provides
458 reasonable details and updates relating to such event of Force Majeure; and (c) implements
459 mitigation measures to the extent practicable.

460 **FAILURE OF TIMELY PAYMENT**

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

465 (a) Fixed Project Costs for Completion.

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

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

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

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

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

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

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

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

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

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

487 Article ("~~Defaulted~~ Delinquent Payment Interest"). If such funding is not made available to the

488 Authority within an additional 90 days from the date of such demand, Reclamation is deemed to

489 have not made timely payment and is in default as it relates to the Defaulted Delinquent Payment

490 Interest.

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

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

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

494 Capacity Interest and Share in the same Project Facilities (the Base Facilities and/or the

495 Downstream Facilities, as applicable) shall have a "right of first offer" to assume all or a portion

496 of Reclamation's Defaulted Interests and Reclamation's related financial obligations under this

497 Agreement, at a price mutually agreed between Reclamation and the Storage Partner purchasing

498 all or a portion of Reclamation's Defaulted Interests. In the event that more than one non-

499 defaulting Storage Partners wish to acquire the Defaulted Interests on the same terms, the

500 Defaulted Interests shall be apportioned pro rata based on the non-defaulting Storage Partner's

501 applicable Capacity Interest and Share in each of the Base Facilities and/or Downstream

502 Facilities unless the non-defaulting Storage Partners agree otherwise.

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

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

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

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

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

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

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

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

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

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

547 i. The Authority shall use its best efforts to facilitate a
548 sale(s) of Sites Water from Reclamation's Capacity Interest and Share to cover the Defaulted

549 Amount, including the reimbursement of the Authority for all reasonable out-of-pocket costs,
550 expenses, disbursements and losses which shall have been paid, incurred or sustained by the
551 Authority in connection with the sale of Sites Water to cover Reclamation's Defaulted Amount;

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

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

558 (c) Variable O&M Costs.

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

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

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

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

572 Reclamation has not made sufficient funding available to the Authority within 30 days of
573 issuance of the billing statement, the Sites Authority shall make written demand upon
574 Reclamation. The written demand shall identify the payment shortfall (“Defaulted Amount”). If
575 sufficient funding is not made available to the Authority within 30 days from the date of such
576 demand, Reclamation is deemed to have not made timely payment and is in default.

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

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

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

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

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

592

593 (e) — Enforcement of Remedies: In addition to the other remedies set forth in
594 Article 10, upon the occurrence of an event of delinquent payment in accordance with this
595 Agreement, any Party shall be entitled to proceed to protect and enforce the rights in a court of
596 competent jurisdiction, consistent with Federal law and without waiving the United States’
597 sovereign immunity from suit.

598 ——— ~~In addition to the other remedies set forth in this Article (Dispute~~
599 ~~Resolution), upon the occurrence of an event of default in accordance with this Agreement, any~~
600 ~~Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this~~
601 ~~Agreement by such appropriate judicial proceeding as such Party shall deem most effectual,~~
602 ~~either by suit in equity or by action at law, to enforce any other legal or equitable right vested in~~
603 ~~such Party by this Agreement or by law. The provisions of this Agreement and the duties of each~~
604 ~~Party, their respective boards, officers or employees shall be enforceable by the other Parties by~~
605 ~~mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction,~~
606 ~~with the losing Party paying all costs and attorney fees of the prevailing Party.~~

607 (e) _____

608 (i) — ~~Without limiting the generality of the foregoing, the Sites~~
609 ~~Authority or Reclamation, as applicable, shall have the right to bring the following actions:~~

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

613 (2) ~~Mandamus. By mandamus or other suit, action or proceeding at~~
614 ~~law or in equity to enforce its rights against the other Party hereto (and its board, officers and~~

615 ~~employees) and carry out its duties and obligations under the law and its covenants and~~
616 ~~agreements as provided herein.~~

617 **WIND-UP**

618 10. If the Authority and the Reservoir Management Board determine, that the Sites
619 Project will be terminated before Completion because of infeasibility, impracticality, inability,
620 failure of the Participants to fund the Sites Project, or failure of the Authority to construct the Sites
621 Project, the Authority shall adopt a resolution to wind-up the Sites Project (a “**Wind-Up**
622 **Resolution**”).

623 (a) Upon adoption of a Wind-Up Resolution by the Authority, the Authority
624 shall first offer to sell the Project Assets to the Storage Partners (excluding the Partner Facilities),
625 at a fair market value as determined by a majority of a panel of 3 licensed appraisers, including (i)
626 any partially constructed or completed physical works or assets that divert Sites Water into or
627 release Sites Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests,
628 or obligations related to the Sites Project. If any Storage Partners accept such offer for any or all
629 of the offered interests, then the Authority and such purchasing Storage Partners shall work in
630 good faith to close upon the sale of such interests within 180 days after the appraiser panel’s
631 determination of fair market value.

632 (b) Upon adoption of a Wind-Up Resolution by the Authority, the Authority
633 shall appoint a winding-up agent (the “**Winding-Up Agent**”). The Winding-Up Agent shall, upon
634 expiration of the time for the Storage Partners to accept the offer described in subsection (b),
635 prepare a plan for disposition of the Project Assets, which shall include plans for mitigating or
636 remediating any hazardous or unsafe conditions located on the Sites Project site that are a direct

637 result of the construction of the Sites Project, and upon approval of the Sites Authority, implement
638 the disposition of the Project Assets in accordance with the plan for disposition, including the
639 disposition of unexpended and unobligated funds of the Sites Authority and the Storage Partners.
640 Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable
641 manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents
642 then held by the Authority shall first be used, based on the Capacity Interest, to pay the following
643 amounts in the following order of priority (i) repay debts of the Authority incurred for funding the
644 Sites Project; provided, however, that any moneys contributed by a self-funding Participant and
645 held at the time of a winding-up shall not be used to repay debts of the Authority incurred for
646 funding the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe
647 conditions located on the Sites Project site pursuant to the plan for disposition of the Project
648 Assets, and (iii) distribute cash to the Participants that had satisfied their capital funding
649 obligations . Any remaining funds shall then be distributed to the Storage Partners based on their
650 proportional respective Capacity Interests. Subject to the Authority Records Management Policy,
651 Storage Partners shall be entitled to copies of any work products developed by the Authority or its
652 consultants on behalf of the Storage Partners, and the Authority shall convey to the Storage
653 Partners, as tenants in common with all other Storage Partners who are not in default under the
654 Benefits and Obligations Contract, a pro rata interest based on the Capacity Interests in all real
655 and personal property remaining after implementation of the plan for disposition of the Project
656 Assets in accordance with this Section.

657 (c) Upon completion of the winding-up process described in this Section, the
658 Authority shall adopt a resolution of termination of the Sites Project. Upon the adoption of such
659 resolution, all Capacity Interests shall be terminated.

660 (d) Notwithstanding anything to the contrary provided herein, so long as any
661 Sites Project obligation under a financing agreement is outstanding (but only to the extent required
662 under such financing agreement), the termination of the Benefits and Obligations Contract shall
663 be subject to the terms of such financing agreement, including the right of the applicable lender to
664 consent to such termination, if any.

665 (e) The Parties agree that any activities performed under this Article shall be
666 subject to applicable Federal, State, and local law.

667 **DISPUTE RESOLUTION**

668 11. Should any dispute arise concerning any provision(s) of this Agreement, or the
669 Parties' rights and obligations thereunder, the United States and the Authority shall meet and
670 confer in an attempt to informally resolve the dispute at the staff level. Both Parties agree to
671 work in good faith to resolve any disputes which may arise. If staff from the Parties are unable to
672 resolve the dispute, the dispute will be elevated to the Area Manager for Reclamation and
673 Executive Director or designee of the Sites Authority. If the Parties are unable to resolve the
674 dispute at this level, then the dispute will be elevated to the Regional Director of Reclamation
675 and the Executive Director of the Sites Authority. If the Parties are unable to resolve the dispute
676 at this level, the Parties may submit disputes to a third-party mediator agreed to by the Parties.
677 Either Party may seek relief in a court of competent jurisdiction, consistent with Federal law and
678 without waiving the United States' sovereign immunity from suit. Prior to the Sites Authority
679 commencing any legal action, or ~~Reclamation~~the Contracting Officer referring any matter to the
680 Department of Justice, the Party-party shall provide to the other Party-party thirty (30) days'
681 written notice of the intent to take such action; Provided, That such notice shall not be required

682 where a delay in commencing an action would prejudice the interests of the Party that intends to
683 file suit. During the thirty (30) day notice period, the Parties shall meet and confer in an attempt
684 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or
685 abridge any right or remedy that the Sites Authority or the United States may have.

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

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

691 **OPINIONS AND DETERMINATIONS**

692 12. Where the terms of this Agreement provide for actions to be based upon the
693 opinion or determination of either Party to this Agreement, said terms shall not be construed as
694 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
695 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
696 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
697 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
698 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
699 affect or alter the standard of judicial review applicable under Federal law to any opinion or
700 determination implementing a specific provision of Federal law embodied in statute or
701 regulation.

702 (a) The Contracting Officer shall have the right to make determinations
703 necessary to administer this Agreement that are consistent with the provisions of this Agreement,

704 the laws of the United States, and the rules and regulations promulgated by the Secretary. Such
705 determinations shall be made in consultation with the Authority to the extent reasonably
706 practicable.

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

711 WATER MEASUREMENT

712 13. The Sites Authority is responsible for the measurement of all Sites Water pursuant
713 to this Agreement at the point(s) of delivery or point(s) of diversion established pursuant to
714 Exhibit D.

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

721 SEVERABILITY

722 14. In the event that any one or more of the provisions contained herein is, for any
723 reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or
724 unenforceability will not affect any other provisions of this Agreement, but this Agreement is to
725 be construed as if such invalid, illegal or unenforceable provisions had never been contained

726 herein, unless the deletion of such provision or provisions would result in such a material change
727 so as to cause the fundamental benefits afforded the Parties by this Agreement to become
728 unavailable or materially altered.

729 **HOLD HARMLESS**

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

743 (b) Reclamation shall defend, and hold harmless the Sites Authority, its
744 officers, agents, and employees from and against any and all claims, damages, losses, liabilities,
745 and expenses arising out of or resulting from the Unites States' control, carriage, handling, use,
746 disposal, or distribution of Sites Water beyond the Delivery Point [up to \$XXXXXXXX
747 amount], except for any damage or claim arising in connection with (i) acts or omissions of the

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

756 **NOTICES**

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

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

763 17. The expenditure or advance of any money or the performance of any obligation of
764 the United States under this Agreement shall be contingent upon appropriation or allotment of
765 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
766 obligations under this Agreement. No liability shall accrue to the United States in case funds are
767 not appropriated or allotted.

768 **OFFICIALS NOT TO BENEFIT**

769 18. No Member of or Delegate to the Congress, Resident Commissioner, or official of
770 the Authority shall benefit from this Agreement other than as a water user or landowner in the
771 same manner as other water users or landowners.

772

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

778

BOOKS, RECORDS, AND REPORTS

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

789

COMPLIANCE WITH LAWS

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

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

797 (c) In protecting the interests of the United States, Reclamation’s contracts
798 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.
799 The Authority shall comply with all applicable Federal, State, and local laws, executive orders,
800 rules and regulations applicable to its performance under this Agreement. These laws may

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

803 **COMPLIANCE WITH CIVIL RIGHTS**

804 22. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
805 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
806 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
807 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
808 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
809 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
810 Interior and/or Bureau of Reclamation.

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

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

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

828

829 **FUNDS TO BE PROVIDED**

830 23. In accordance with the Prompt Payment Act, Reclamation shall transmit payment
831 to the Sites Authority in accordance with Exhibit A, Article 9 and Article 10 and subject to
832 Article 16 of this Agreement.

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

838 (b) Upon execution of this Agreement, funds for any additional funds not
839 required by the Spend Plan may be transmitted to the Authority, provided that any such advance
840 of funds shall be released in as many installments as the Contracting Officer deems necessary.
841 The Authority may request an advance of funds in addition to funds required by the Spend Plan;
842 provided that, the Authority must provide the Contracting Officer written justification for the
843 immediate need for the funds requested, including how the funds would be applied, and the
844 Contracting Officer shall have the final determination of how and when installments are
845 transmitted.

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

852 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

861

862

AGREEMENT DRAFTING CONSIDERATIONS

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

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

870 (SEAL)

THE UNITED STATES OF AMERICA

871
872
873
874

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

875

SITES AUTHORITY

876
877
878

Attest:

By: _____
Chair, Board of Directors

879
