

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.....	1111
3	Federal Participation in the Sites Project.....	1212
4	Costs Associated with the Sites Project.....	1215
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.....	3435
12	Hold Harmless.....	3435
13	Notices.....	3536
14	Contingent on Appropriation or Allotment of Funds.....	3636
15	Officials Not to Benefit.....	3637
16	Assignment Limited - Successors and Assigns Obligated.....	3637
17	Books, Records, and Reports.....	3637
18	Compliance with Laws.....	3737
19	Compliance with Civil Rights.....	3738

20 Medium for Transmitting Payments4039
21 Agreement Drafting Considerations4039
Signature Page21

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”) 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 Owned~~ Facilities or other
71 facilities 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.

96 (j) "Downstream Facilities" shall mean the Sites [Project-Owned](#) Facilities or
97 other facilities that are utilized by select Storage Partners listed as Downstream Facilities in
98 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. Additional Fixed O&M Costs include
111 repair and replacement costs not charged to a capital account, and insurance and contributions to
112 reasonably required reserves. Fixed O&M Costs exclude (A) depreciation and (B) amortization
113 of intangibles or other bookkeeping entries of a similar nature. Fixed O&M Costs include all
114 expenditures that are not Fixed Project Costs or Variable O&M Costs that are incurred by the
115 Sites Authority.

116 (n) “Fixed Project Costs” shall mean (i) development, design, construction
117 and capital costs of the Sites Project Facilities prior to Completion, and (ii) individual repair,
118 replacement, rehabilitation, improvement, or regulatory compliance activities incurred after
119 Completion of the Sites Project Facilities to the extent not covered by Fixed O&M Costs.

120 (o) “Force Majeure” shall mean events beyond the reasonable control of a
121 Party, including strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature,
122 acts in compliance with any law, regulation or order (whether valid or invalid) by the United
123 States of America or any state thereof or any other domestic or foreign governmental body or

124 instrument thereof having jurisdiction in the matter, in each case which directly, materially and
125 adversely affects a Party's ability to perform its obligations under this Agreement.

126 (p) "Generally Accepted Accounting Principles" shall mean such accepted
127 accounting practice as conforms at the time to generally accepted accounting principles to public
128 agencies in the United States of America, consistently applied.

129 (q) "Good Industry Practice" shall mean the exercise of the degree of skill,
130 diligence, prudence and foresight which would reasonably and ordinarily be expected from a
131 skilled and experienced designer, engineer, constructor, supplier, operator or maintenance
132 provider, as applicable, operating in the United States under the same or similar circumstances
133 and conditions, seeking in good faith to comply with its contractual obligations, this Agreement
134 and all Applicable Law and Governmental Approvals in conformance with applicable
135 professional engineering principles, construction, operations and maintenance practices generally
136 accepted as standards of the industry in the State.

137 (r) "IL4 Water" shall mean Incremental Level 4 refuge water supply pursuant
138 to the Central Valley Project Improvement Act, Title 34 of Public Law 102-575.

139 (s) "In-kind Services" shall mean eligible time and effort, real and personal
140 property, and goods and services, as defined in Exhibit H. In-kind Services may be applied to the
141 cost-share, but the value of the in-kind contributions must be evaluated and documented as
142 described in Article 4. Valuation of In-kind Services shall be in accordance with 2 CFR Part 200.

143 (t) "O&M Costs" shall mean Fixed O&M Costs and Variable O&M Costs, ~~or~~
144 either of them as the context requires.

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

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

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

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

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

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

163 (aa) “Sites Project Costs” shall mean the sum of Fixed O&M Costs, Fixed
164 Project Costs and Variable O&M Costs payable by or credited to Reclamation under this
165 Agreement, or each of them, as the context requires.

166 (bb) “Project Use Energy” shall mean the electrical capacity, energy, and
167 associated ancillary service components required to provide the minimum electrical service using

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

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

175 ~~(aa)~~(dd) _____ “Sites Project Facilities” shall mean collectively the Sites Owned
176 Facilities, Federal Facilities and Partner Facilities, or any of them as the context requires.

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

179 ~~(ee)~~(ff) “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 ~~(dd)~~(gg) _____ “Sites Project” shall mean the -Sites Project Facilities managed,
185 owned and operated by the Sites Authority. Sites Project Facilities are outlined in Exhibit B to
186 this Agreement.

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

189 ~~(ff)~~(ii) “Sites Water” shall mean the water that is appropriated under the Sites
190 Water Right.

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

193 ~~(hh)~~(kk) _____ “Storage Partner” shall mean the governmental agencies, water
194 organizations, and others who have funded and received Capacity Interest and the associated
195 Sites Water.

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

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

200 ~~(kk)~~(nn) _____ “Variable O&M Costs” shall mean the operation and maintenance
201 costs 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), replacement and other costs, funding of reserves in accordance with the
205 Sites Authority policies and Generally Accepted Accounting Principles, and wheeling and other
206 conveyance costs for the use of Federal Facilities, Partner Facilities, and other facilities that are
207 not Sites Owned Facilities.

208 ~~(ll)~~(oo) “Year” shall mean the period beginning on January 1 of each calendar
209 year and ending on the last day of December of such calendar year.

210

TERM OF AGREEMENT

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

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

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

221 (c) This Agreement may be modified or amended upon written mutual
222 agreement of the Parties. The Parties agree that any exhibit attached to this Agreement may be
223 amended, updated, or replaced from time to time without requiring a formal amendment to this
224 Agreement, provided that: (1) such amendment, update, or replacement is documented in writing
225 and signed by authorized representatives of the Parties; (2) the written amendment expressly
226 references this Agreement and the specific exhibit being amended; (3) upon execution by the
227 Parties, the amended exhibit shall automatically replace the prior version and be deemed
228 incorporated into this Agreement as of the effective date stated in the amended exhibit; and (4)
229 the amended exhibit shall not modify or affect any other terms or conditions of this Agreement.

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FEDERAL PARTICIPATION IN THE SITES PROJECT

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

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

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

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

~~(e)(d)~~ The Parties agree that Exhibit I: Governance, describes Reclamation’s involvement in Sites Project governance. No other rights or duties are authorized to Reclamation under this Agreement unless specified herein.

COSTS ASSOCIATED WITH THE SITES PROJECT

4. All Project ~~costs~~ 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,

253 and the Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-
254 Deficiency Act (31 U.S.C. § 1341 et seq.). Reclamation costs incurred after the Effective Date of
255 this Agreement shall only be credited, reimbursed or otherwise applied toward Reclamation's
256 participation in the Sites Project if they constitute Allowable Costs.

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

262 (b) The Parties agree:

263 (i) Pursuant to the Feasibility Memorandum of Understanding and
264 Pre-construction Memorandum of Agreement, Reclamation's costs prior to the Effective Date of
265 this Agreement as set out in the Spend Plan are considered Allowable Costs and will be credited
266 to Reclamation's share of costs associated with the Sites Project in accordance with this Article
267 4;

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

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

273 (1) O&M Costs: The Authority will be responsible for O&M
274 of the Sites Project. The Authority will identify the annual O&M Costs attributable to

275 Reclamation. Reclamation will pay the attributable portion within 90 days of receiving an
276 invoice, subject to available appropriations.

277 a. Fixed O&M Costs assigned annually to

278 Reclamation shall be proportionate to Reclamation's Capacity Interest ~~and Share~~ and associated
279 Downstream Facilities Capacity Interest.

280 b. Variable O&M Costs assigned annually to

281 Reclamation shall be proportionate to Reclamation's use of ~~its~~ Capacity Interest ~~and Share and~~
282 associated Downstream Facilities Capacity Interest.

283 (2) Use of Reclamation's unused Downstream Facilities

284 Capacity ~~Share~~Interest: In the event a Storage Partner utilizes Reclamation's Downstream

285 Facilities Capacity ~~Share~~Interest in the Dunnigan Pipeline, the Authority will develop and

286 charge the Storage Partner a rate for such use commensurate with the use, unless otherwise

287 directed by Reclamation. Proceeds received will be credited toward Reclamation's fixed and

288 variable O&M cost.

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

290 toward Reclamation's contribution to ~~Sites~~ Project ~~Ce~~osts as described in this Agreement. In-

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

292 in accordance with Exhibit H.

293 ~~(c) — Non allowable Costs include, but are not limited to:~~

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

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

296 (ii) The Sites Project is not part of the Central Valley Project, and as

297 such, will not receive Project Use Energy.

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

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

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

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

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

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

326 **OPERATION OF SITES ~~PROJECT OWNED~~ FACILITIES**

327 6. The Sites Authority will operate and maintain the Sites Project Owned Facilities
328 in good faith and in accordance with all applicable agreements and Article 20. The Sites
329 Authority will protect the Sites Water Right and will manage, control, and protect Sites Water in
330 good faith and in accordance with all applicable laws and regulations.

331 (a) Sites Project Owned Facilities will be operated in a manner that avoids
332 harm to the Central Valley Project, its water rights, and ~~f~~Federal ~~f~~Facilities.

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

341 or otherwise), the risk of loss in the Sites Water between the Delivery Point and Secondary
342 Delivery Point(s).

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

350 (e)(d) Reclamation shall make reasonable and beneficial use of Sites Water
351 consistent with this Agreement.

352 (d)(e) The Parties agree Reclamation bears the risk of loss or reduction in Sites
353 Water on a pro-rata and substantially similar basis as other Storage
354 Partners.

355 (e)(f) The Authority will operate and maintain the Sites Project in full
356 compliance with the terms of this Agreement and in such a manner that the Sites Project remains
357 in good and efficient condition, subject to exercise of discretion to fund and carry out Capital
358 Improvements.

359 (f)(g) Reclamation's share of Sites Water diversions will be proportional with its
360 Capacity Interest ~~and Share~~ unless a lesser amount is requested by Reclamation.

361 (e)(h) Subject to Section (f) below, the Sites Authority or Reclamation may
362 request Capital Improvements ~~to the Sites Project Facilities~~ to provide an added benefit to the
363 Sites Project. Such Capital Improvements shall be subject to approval by the Sites Authority.

364 The Sites Authority will prepare and distribute a document detailing the anticipated Project ~~costs~~
365 Costs and benefits of the proposed Capital Improvements.

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

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

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

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

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

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

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

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

398 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

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

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

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

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

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

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

430 amended for the construction of the Sites Project. The Parties agree to meet and confer as

431 necessary to ensure the [Sites](#) Project's Section 106 construction compliance is timely

432 implemented throughout the duration of construction.

433 (e) Reclamation has completed compliance with the National Environmental

434 Policy Act of 1969, as amended for the construction and operations of the Sites Project. The

435 Parties agree to move expeditiously, meet and confer as necessary, and have staff resources

436 dedicated to ensuring that any changes to the [Sites](#) Project's NEPA compliance is implemented

437 without delay throughout the duration of construction.

438 **EXCUSED PERFORMANCE**

439 8. The Authority intends to enter into other agreements that will facilitate the

440 operations and construction of the Sites Project and in performing its obligations under such

441 agreements, the Sites Authority intends to comply with the terms of this Agreement; and

442 (a) Upon the occurrence of an event of Force Majeure, the Sites Authority

443 shall be excused from its obligations under this Agreement for the period during which it is

444 unable to comply with such obligations as a result of such event of Force Majeure; and

445 Reclamation shall be excused from its obligations under this Agreement for the period during

446 which it is unable to comply with such obligations as a result of the event of Force Majeure,

447 other than the payment of Project ~~costs~~ Costs described in this Agreement, which obligations are

448 not subject to reduction or abatement, unless the event of Force Majeure specifically limits

449 Reclamation's ability to pay, in which case the parties will meet and confer to reach a mutually

450 acceptable timeline for payment.

451 (b) Any excuse of obligations in accordance with this Article is subject to the

452 proviso that, upon obtaining knowledge of an event of Force Majeure, such Party: (a) promptly

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

456 **FAILURE OF TIMELY PAYMENT**

457
458 9. Pursuant to WIIN Act § 4007, Reclamation may contribute up to twenty-five (25)
459 percent of the Sites Project. Reclamation shall diligently pursue funding—within its authorities—
460 sufficient to meet its obligations under this Agreement in a timely manner.

461 (a) Fixed Project Costs for Completion.

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

468 (ii) The Authority will provide Reclamation with a billing statement
469 for Reclamation’s share of Fixed Project Costs, based on such costs anticipated to be incurred
470 during the following one (1) year based on the Spend Plan, and documentation of any allocated
471 funds shall be due within 30 days of issuance of the billing statement.

472 (iii) Reclamation will provide documentation of any allocated funds
473 within thirty (30) days of issuance of the billing statement and will endeavor to execute
474 appropriate funding mechanisms, or amendments thereto, as soon as reasonably practicable.

475 (iv) Consistent with Article X [FUNDS TO BE PROVIDED], if
476 Reclamation has not provided documentation of sufficient allocated funds to the Authority
477 within 90 days of issuance of the billing statement, the Sites Authority shall make written
478 demand upon Reclamation. The written demand shall identify the portion of Reclamation's
479 Capacity Interest that is at risk of forfeiture, being that portion of Reclamation's Capacity
480 Interest for which Reclamation has not yet provided such documentation, based on the current
481 Spend Plan and in accordance with this Article ("Unpaid Capacity Interest"). If such
482 documentation is not made available to the Authority within an additional 90 days from the date
483 of such demand, Reclamation is deemed to have not made timely payment and forfeits the
484 Unpaid Capacity Interest.

485 (v) Upon a forfeiture of Unpaid Capacity Interest by Reclamation:
486 i. The Sites Authority shall use its best efforts to
487 facilitate a sale of Reclamation's applicable Unpaid
488 Capacity Interest.
489 ii. The other non-defaulting Storage Partners holding a
490 Capacity Interest in the same Sites Project Facilities
491 (the Base Facilities and/or the Downstream
492 Facilities, as applicable) shall have a "right of first
493 offer" to assume all or a portion of Reclamation's
494 Unpaid Capacity Interest and related financial
495 obligations under this Agreement, at a price
496 mutually agreed between the Sites Authority and

497 the Storage Partner purchasing all or a portion of
498 Reclamation's Unpaid Capacity Interest.
499 iii. Subject to Section (iv) below, in the event that the
500 Sites Authority is unable to facilitate a sale of all of
501 Reclamation's Unpaid Capacity Interest to other
502 non-defaulting Storage Partners in accordance with
503 Section (ii) above, the Sites Authority may make
504 such Unpaid Capacity Interest available to entities
505 other than the non-defaulting Storage Partners, and
506 may enter into an agreement with such entities for
507 the purchase of all or a portion of Reclamation's
508 Unpaid Capacity Interest and the assumption of the
509 related obligations under this Agreement.

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

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

519 ~~buyer thereof for that share of costs. In the event of such sale, Reclamation shall not remain~~
520 ~~liable for the future Sites Project Costs associated with such sold Capacity Interest.~~

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

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

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

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

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

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

549 a. Upon a Fixed Project Cost or Fixed O&M Cost
550 delinquency by Reclamation not related to Completion:

551 i. The Authority shall use its best efforts to facilitate a
552 sale(s) of any or all Sites Water from Reclamation's Capacity Interest to cover the Delinquent
553 Payment Amount, including the reimbursement of the Authority for all reasonable out-of-pocket
554 costs, expenses, disbursements and losses which shall have been paid, incurred or sustained by
555 the Authority in connection with the sale of Sites Water to cover Reclamation's Delinquent
556 Payment Amount;

557 ii. Reclamation shall have no right to utilize Sites
558 Water in its Capacity Interest-, no right to otherwise utilize its Capacity Interest, and agrees to
559 allow other Storage Partners to utilize its Capacity Interest until its account is no longer
560 delinquent; and

561 iii. Reclamation's right of first refusal in Article 5 is
562 suspended until its account is no longer delinquent.

563 (c) Variable O&M Costs.

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

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

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

576 a. Consistent with Article X [FUNDS TO BE PROVIDED], if
577 Reclamation has not made sufficient funding available to the Authority within 30 days of
578 issuance of the billing statement, the Sites Authority shall make written demand upon
579 Reclamation. The written demand shall identify the payment shortfall ("Delinquent Amount"). If
580 sufficient funding is not made available to the Authority within 30 days from the date of such
581 demand, Reclamation is deemed to have not made timely payment and is in delinquency.

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

583 i. The Sites Authority shall use its best efforts to
584 facilitate a sale(s) of any or all Sites Water from Reclamation's Capacity Interest to cover the
585 Delinquent Amount, including the reimbursement of the Authority for all reasonable out-of-
586 pocket costs, expenses, disbursements and losses which shall have been paid, incurred or

587 sustained by the Authority in connection with the sale of Sites Water to cover Reclamation's
588 Defaulted Amount;

589 ii. Reclamation shall have no right to utilize Sites
590 Water in its Capacity Interest, no right to otherwise utilize its Capacity Interest, and agrees to
591 allow other Storage Partners to utilize its Capacity Interest until its account is no longer in
592 default; and

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

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

597 ~~(d)~~ —

598

599 (e) Remedies: In addition to the other remedies set forth in Article 10, upon
600 the occurrence of an event of delinquent payment in accordance with this Agreement, any Party
601 shall be entitled to proceed to protect and enforce the rights in a court of competent jurisdiction,
602 consistent with Federal law and without waiving the United States' sovereign immunity from
603 suit.

604

WIND-UP

605 10. If the Authority and the Reservoir Management Board determine, that the Sites
606 Project will be terminated before Completion because of infeasibility, impracticality, inability,
607 failure of the Participants to fund the Sites Project, or failure of the Authority to construct the Sites
608 Project, the Authority shall adopt a resolution to wind-up the Sites Project (a "**Wind-Up**
609 **Resolution**").

610 (a) Upon adoption of a Wind-Up Resolution by the Authority, ~~the~~
611 Authority Storage Partners shall have a pro-rata right of first refusal to the Project Assets
612 (excluding the Partner Facilities and Federal Facilities) based on their paid Fixed Project Costs
613 ~~first offer to sell the Project Assets to the Storage Partners (excluding the Partner Facilities)~~, at a
614 fair market value as determined by a majority of a panel of ~~3~~three (3) licensed appraisers, including
615 (i) any partially constructed or completed physical works or assets that divert Sites Water into or
616 release Sites Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests,
617 or obligations related to the Sites Project. If any Storage Partners ~~accept such offer for any or all~~
618 ~~of the offered~~proceed with purchase of Project Assets interests, then the Authority and such
619 purchasing Storage Partners shall work in good faith to close upon the sale of such interests within
620 180 days after the appraiser panel's determination of fair market value.

621 (b) Upon adoption of a Wind-Up Resolution by the Authority, the Authority
622 shall appoint a winding-up agent (the "**Winding-Up Agent**"). The Winding-Up Agent shall, upon
623 expiration of the time for the Storage Partners to accept the offer described in subsection (b),
624 prepare a plan for disposition of the Project Assets, which shall include plans for mitigating or
625 remediating any hazardous or unsafe conditions ~~located on the Sites Project site~~ that are a direct
626 result of the construction of the Sites Project, ~~and upon~~Upon approval of the Sites Authority, the
627 Winding-Up Agent shall implement the disposition of the Project Assets in accordance with the
628 plan for disposition, including the disposition of unexpended ~~and unobligated~~ funds ~~of held by~~ the
629 Sites Authority ~~and to~~ the Storage Partners. Non-cash assets shall be liquidated by the Winding-
630 Up Agent in a commercially reasonable manner. Proceeds from the disposition of Project Assets
631 and any other cash or cash equivalents then held by the Authority shall first be used, based on the
632 Capacity Interest pro-rata share of paid Sites Project Costs, to pay the following amounts in the

633 following order of priority (i) repay debts of the Authority incurred for funding the Sites Project;
634 provided, however, that any moneys contributed by a self-funding Participant Storage Partner and
635 held at the time of a winding-up shall not be used to repay debts of the -Authority incurred for
636 ~~funding-financing~~ the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or
637 unsafe conditions located on the Sites Project site pursuant to the plan for disposition of the -Project
638 Assets, and (iii) distribute cash to the Participants Storage Partners that had having satisfied their
639 ~~capital funding obligations~~ Sites Project Costs; provided that any unexpended funds which the
640 Sites Authority received from Reclamation will be returned to Reclamation. Any remaining funds
641 shall then be distributed to the Storage Partners based on their proportional respective Capacity
642 Interests paid Sites Project Costs. In the event Reclamation has advanced funding above the
643 Capacity Interest specified in this Agreement, Reclamation will be reimbursed at that equivalent
644 pro-rata share. Subject to the Authority Records Management Policy, Storage Partners shall be
645 entitled to copies of any work products developed by the Authority or its consultants on behalf of
646 the Storage Partners, and the Authority shall convey to the Storage Partners, as tenants in common
647 with all other Storage Partners who are not in default under the Benefits and Obligations Contract,
648 a pro rata interest based on the Capacity Interests paid Fixed Project Costs in all real and personal
649 property remaining after implementation of the plan for disposition of the Project Assets in
650 accordance with this Section.

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

654 (d) ~~Notwithstanding anything to the contrary provided herein, so long as any~~
655 ~~Sites Project obligation under a financing agreement is outstanding (but only to the extent required~~

656 ~~under such financing agreement), the termination of the Benefits and Obligations Contract shall~~
657 ~~be subject to the terms of such financing agreement, including the right of the applicable lender to~~
658 ~~consent to such termination, if any.~~

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

661 **DISPUTE RESOLUTION**

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

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

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

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

685 OPINIONS AND DETERMINATIONS

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

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

699 determinations shall be made in consultation with the Authority to the extent reasonably
700 practicable.

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

705 **WATER MEASUREMENT**

706 13. The Sites Authority is responsible for the measurement and recording of all Sites
707 Water delivered pursuant to this Agreement up to and including the Delivery Point, and any
708 additional location(s) mutually agreed to in writing by the Sites Authority and Reclamation.

709 (a) Prior to Completion, the Sites Authority shall ensure that the water
710 measuring devices as shown in Exhibit B are installed and operating properly. The Sites
711 Authority will be responsible for installing, operating, maintaining, and repairing all such
712 measurement devices. The equipment and methods used to make such measurement and
713 recordings shall be in accordance with Good Industry Practices. Upon request of either party to
714 this Agreement, the Sites Authority shall investigate, or cause to be investigated, the accuracy of
715 such and shall take any necessary steps to adjust any errors appearing therein. For any period of
716 time when accurate measurements have not been made, the Sites Authority shall consult with
717 Reclamation prior to making a final determination of the quantity delivered for that period of
718 time.

719 (b) After delivery, Reclamation shall ensure that Sites Water delivered under
720 this Agreement is measured and supports the Sites Authority's applicable reporting on Sites

721 Water and Sites Water Right. The water measuring devices or water measuring methods of
722 comparable effectiveness must be acceptable to the Sites Authority. Reclamation shall be
723 responsible for installing, operating, maintaining, and repairing all such measuring devices and
724 implementing all such water measuring methods at no cost to the Sites Authority. On or before
725 the 20th calendar day of each month, Reclamation shall provide the Sites Authority with the
726 written quantity of water taken during the preceding month under this Agreement.

727 **SEVERABILITY**

728 14. In the event that any one or more of the provisions contained herein is, for any
729 reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or
730 unenforceability will not affect any other provisions of this Agreement, but this Agreement is to
731 be construed as if such invalid, illegal or unenforceable provisions had never been contained
732 herein, unless the deletion of such provision or provisions would result in such a material change
733 so as to cause the fundamental benefits afforded the Parties by this Agreement to become
734 unavailable or materially altered.

735 **HOLD HARMLESS**

736 15. (a) The Authority shall indemnify, defend, and hold harmless the United
737 States, its officers, agents, and employees from and against any and all claims, damages, losses,
738 liabilities, and expenses arising out of or resulting from the United States' work under this
739 agreement that constitutes Allowable Costs, ~~or the design, operation, or maintenance of the Sites~~
740 ~~Project~~, provided the claims, damages, losses, liabilities, or expenses are not the result of any
741 willful or negligent acts or omissions on the part of the United States The Authority will not
742 assert that Reclamation, its Director, officers, agents or employees, are liable for damages of any

743 nature whatsoever arising out of any actions or omissions by the Authority, its directors, officers,
744 agents or employees, related to the Authority's performance of this Agreement, where such
745 liability is caused by an act, error or omission of the Authority, its director, officers, agents or
746 employees.

747 (b) The Parties agree that the Sites Authority, Reclamation shall defend, and
748 hold harmless the Sites Authority, its officers, agents, and employees will not be liable for any
749 from and against any and all claims, damages, losses, liabilities, and expenses arising out of or
750 resulting from the Unites States' control, carriage, handling, use, disposal, or distribution of Sites
751 Water beyond the Delivery Point, [up to \$XXXXXXXX amount], except for any damage or
752 claims arising in connection with (i) acts or omissions of the Sites Authority or any of its
753 directors, officers, employees, agents, and assigns with the intent of creating the situation
754 resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its
755 directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or
756 directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a
757 malfunction of a Sites Project Facility.

758 (c) Nothing herein shall be deemed to increase the liability of Reclamation
759 beyond the provisions of the Federal Tort Claims Act (28 U.S.C. 2671, et seq.). This section is
760 subject to available appropriations and shall not be construed as to allow for violation of the
761 Anti-Deficiency Act (31 U.S.C. 1341, et seq.).

762 **NOTICES**

763 16. Any notice, demand, or request authorized or required by this Agreement shall be
764 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or
765 delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800

766 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage
767 prepaid, or delivered to the Sites Authority, 122 Old Highway 99 West, Maxwell, CA 95955.

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

769 17. The expenditure or advance of any money or the performance of any obligation of
770 the United States under this Agreement shall be contingent upon appropriation or allotment of
771 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
772 obligations under this Agreement. No liability shall accrue to the United States in case funds are
773 not appropriated or allotted.

774 **OFFICIALS NOT TO BENEFIT**

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

778 **ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

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

784 **BOOKS, RECORDS, AND REPORTS**

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

795

COMPLIANCE WITH LAWS

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

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

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

809

COMPLIANCE WITH CIVIL RIGHTS

810 22. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
811 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
812 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
813 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
814 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
815 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
816 Interior and/or Bureau of Reclamation.

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

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

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

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

834 **REPORTING REQUIREMENTS**

835 23. The Authority shall provide Reclamation with progress and financial status
836 reports to support disbursements under the Spend Plan and reporting requirements under Federal
837 Reclamation law.

838 (a) Progress Reports: As of the Effective Date of this Agreement through
839 Completion, the Authority shall provide progress reports after funds are disbursed and before any
840 subsequent disbursement of funds pursuant to the Spend Plan. Progress reports must contain a
841 narrative of the work accomplished, descriptions of the contracts, major subcontracts, and
842 modifications implemented during the reporting period, architect, and engineer (A/E) service
843 deliverables, the percentage of work completed, the Completion status, and any problems
844 encountered, and corrective actions taken. Any issues that impact or may pose a future risk to
845 cost, scope, or schedule will be identified. The report will include an updated schedule.

846 (b) Financial Reports: As of the Effective Date of this Agreement through
847 Completion, the Authority shall provide financial reports using Standard Form-425 (Federal
848 Financial Report). Reports shall be provided after funds are disbursed and before any subsequent
849 disbursement of funds pursuant to the Spend Plan.

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FUNDS TO BE PROVIDED

23.24. In accordance with the Prompt Payment Act, Reclamation shall transmit payment to the Sites Authority in accordance with Exhibit A, Article 9 and Article 10 and subject to Article 16 of this Agreement. Any applicable interest penalties shall be paid by Reclamation and shall not be credited towards Reclamation’s share of Project Costs.

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

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

(c) The Sites Authority will deposit each payment in an individual insured account or accounts for Reclamation established and held by the Sites Authority separate and apart from the Sites Authority’s other funds and accounts, and shall apply such amount, including the investment earnings thereon, to pay Reclamation’s share of the cost of the

872 applicable proportionate Sites Project ~~costs~~Costs in accordance with the terms of this
873 Agreement. Such accounts and any investments shall be held in compliance with applicable law.
874 ~~(e)~~—The Authority will provide Reclamation with an invoice for Reclamation’s
875 share of Fixed Project Costs, based on such costs anticipated to be incurred during the following
876 quarter based on the Spend Plan, and payment shall be due within 30 days of issuance of the
877 invoice.

878 (d)
879 ~~(d)(e)~~ If delayed payment or payment procedures imposed by Reclamation under
880 this Agreement require the Sites Authority or Participants to incur additional costs, such as any
881 resulting interest expense, financing charges, or related fees, additional costs so incurred shall be
882 reimbursed in full by Reclamation. Such costs shall not be credited toward Reclamation’s share
883 of Sites Project Costs.

884 **MEDIUM FOR TRANSMITTING PAYMENTS**

885 24.25. (a) All payments from the Authority to the United States under this
886 Agreement shall be by the medium requested by the United States on or before the date payment
887 is due. The required method of payment may include checks, wire transfers, or other types of
888 payment specified by the United States.

889 (b) Upon execution of the Agreement, the Authority shall furnish the
890 Contracting Officer with the Authority’s taxpayer’s identification number (TIN). The purpose for
891 requiring the Authority’s TIN is for collecting and reporting any delinquent amounts arising out
892 of the Authority’s relationship with the United States.

893
894 **AGREEMENT DRAFTING CONSIDERATIONS**

895 25.26. This Agreement has been negotiated and reviewed by the parties hereto, each of
896 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced
897 Articles of this Agreement have been drafted, negotiated, and reviewed by the parties, and no
898 one party shall be considered to have drafted the stated articles. Single-spaced articles are
899 standard articles pursuant to Reclamation policy.

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Attest:

By: _____
Chair, Board of Directors

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