

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	<u>Development, Construction and Ownership of the Sites Project.....</u>	<u>12</u>
<del>34</del>	Federal Participation in the Sites Project.....	<del>12</del> <u>21213</u>
<del>45</del>	Costs Associated with the Sites Project.....	<del>213</del> <u>124</u>
<del>56</del>	Lease or Sale of <u>Storage Capacity, Conveyance</u> -Capacity <u>Interest</u> , and Sites Water .....	<del>51</del> <u>716</u>
<del>67</del>	Operation of Sites <u>Reservoir Owned Facilities</u> .....	<del>51</del> <u>716</u>
<del>78</del>	Environmental and Cultural Coverage and Compliance .....	<del>82</del> <u>019</u>
9	<u>Excused Performance.....</u>	<u>1022</u>
10	<u>Failure of Timely Payment .....</u>	<u>23</u>
11	<u>Wind-Up .....</u>	<u>29</u>
<del>812</del>	Dispute Resolution.....	<del>311</del> <u>02221</u>
<del>913</del>	Opinions and Determinations .....	<del>322</del> <u>13332</u>
<del>1014</del>	Water Measurement .....	<del>332</del> <u>23433</u>
<del>1115</del>	Severability .....	<del>342</del> <u>33534</u>
<del>1216</del>	Hold Harmless .....	<del>233</del> <u>534</u>
<del>1317</del>	Notices .....	<del>24</del> <u>36</u>
<del>1418</del>	Contingent on Appropriation or Allotment of Funds .....	<del>24</del> <u>36</u>

<del>1519</del>	Officials Not to Benefit.....	<u>253736</u>
<del>1620</del>	Assignment Limited - Successors and Assigns Obligated.....	<u>253736</u>
<del>1721</del>	Books, Records, and Reports .....	<u>253736</u>
<del>1822</del>	Compliance with Laws .....	<u>263837</u>
<del>1923</del>	Compliance with Civil Rights.....	<u>263837</u>
<u>24</u>	<u>Reporting Requirements .....</u>	<u>39</u>
<u>25</u>	<u>Funds to be Provided .....</u>	<u>40</u>
<del>2026</del>	Medium for Transmitting Payments .....	<u>294139</u>
<del>2127</del>	Agreement Drafting Considerations .....	<u>304140</u>
	Signature Page .....	<u>4221</u>

Exhibit A: Spend Plan

Exhibit B: Sites Project Information, Capacity Interest and Facilities

Exhibit C: Payment Formulas

Exhibit D: Water Measurement and Delivery Points

Exhibit E: Lease and Sale of 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

Exhibit I: Governance

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

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 Sites Authority are referred to collectively as the “Parties,”  
11   and individually as a “Party.”

12 WITNESSETH, that:

13 **EXPLANATORY RECITALS**

14 [1<sup>st</sup>] WHEREAS, § 4007(g) of the WIIN Act authorizes the Secretary of the Interior,  
15 acting through the Commissioner, to partner or enter into an agreement regarding the water  
16 storage projects identified in § 103(d)(1) of the Water Supply, Reliability, and Environmental  
17 Improvement Act (Public Law 108-361; 118 Stat. 1684) with local joint powers authorities  
18 formed pursuant to California State law by irrigation districts and other local water districts and  
19 local governments within the applicable hydrologic region, to advance those projects; and

20 [2<sup>nd</sup>] WHEREAS, the Sites Project was identified in § 103(d)(1) of the Water Supply,  
21 Reliability, and Environmental Improvement Act (Public Law 108-361; 118 Stat. 1684); and

22 [3<sup>rd</sup>] WHEREAS, the Sites ~~Project~~ Authority, previously known as the Sites Joint  
23 Powers Authority, was formed as a California joint powers authority operating under and by  
24 virtue of Section 6500 et seq., of the California Government Code and formed in accordance  
25 with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be  
26 modified from time to time, with the primary purpose of designing, constructing, owning,  
27 operating and maintaining the Sites Project, a State-led storage project; and

28 [4<sup>th</sup>] WHEREAS, Reclamation completed the North-of-the-Delta Offstream Storage –  
29 Sites Feasibility Report (“Feasibility Report”) in December 2020 and the North-of-the-Delta  
30 Offstream Storage Investigation Feasibility Report Addendum in January 2023, which  
31 determined the potential Federal and non-Federal interest in the selected alternative; and

32 [5<sup>th</sup>] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with  
33 State water rights laws, the right to use the capacity of a State-led storage project for which the  
34 Secretary of the Interior has entered into an agreement under this subsection shall be allocated in

35 such manner as may be mutually agreed to by the Secretary of the Interior and each other party  
36 to the agreement.”; and

37 [6<sup>th</sup>] WHEREAS, pursuant to § 4007(f)(1) of the WIIN Act, the California Water  
38 Commission determined that the State-led Sites Project is consistent with the California Water  
39 Quality, Supply, and Infrastructure Improvement Act; and

40 [7<sup>th</sup>] WHEREAS, on November 2, 2023, the Sites Authority and Reclamation released  
41 a joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter  
42 “FEIR/FEIS”, for the Project; and the Sites Authority certified the FEIR/FEIS and adopted the  
43 Project with Board Resolution 2023-02; and on January 23, 2026 Reclamation signed its Record  
44 of Decision for the construction and operation of the Sites Project; and

45 [8<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into and comply with contracts  
46 with State and local agencies pursuant to which the State and local agencies will receive certain  
47 benefits (including water service) and have certain obligations related to the Sites Project. These  
48 include (i) Exhibit G: Agreement Between the Department of Water Resources of the State of  
49 California, the United States Bureau of Reclamation, and the Sites Project Authority to  
50 Coordinate in the Operations of the Sites Reservoir Project; (ii) Public Benefits Agreements  
51 with California State Agencies; (iii) Proposition 1 Water Storage Investment Program Contract  
52 with the California Water Commission; and (iv) Benefits and Obligations Contract.

53 [9<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into and comply with Partner  
54 Agreements ~~contracts~~ with agencies to convey water related to and from the Sites Project.

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

57 its tributaries, Stone Corral Creek and its tributaries, and the watershed of Sites Reservoir to be  
58 allocated consistently with such agreement.

59

60 NOW, THEREFORE, it is agreed by and between the Parties hereto as follows:

61 **DEFINITIONS**

62 1. When used herein unless otherwise distinctly expressed, or manifestly  
63 incompatible with the intent hereof, the following term:

64 (a) "Allowable Costs" means those costs eligible for reimbursement or credit  
65 under this Agreement as defined and subject to Exhibit H: Allowable Costs; Approval,  
66 Documentation, and Cost Allocation.

67 (b) "Anadromous Fish Benefits" shall mean the Sites Water in Reclamation's  
68 Capacity Interest in Sites Reservoir that Reclamation manages to meet its environmental  
69 compliance obligations.

70 (c) "Base Facilities" shall mean the Sites Owned Facilities or other facilities  
71 available to all Storage Partners listed as Base Facilities in Exhibit B: Sites Project Information,  
72 Capacity Interest and Facilities.

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

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

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

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

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

95 (i) "Delivery Point" shall mean Funks Reservoir or Terminal Regulating  
96 Reservoir, at which the Sites Authority will make water supplies available to Reclamation.

97 (j) "Downstream Facilities" shall mean the Sites Owned Facilities or other  
98 facilities that are utilized by select Storage Partners listed as Downstream Facilities in Exhibit B:  
99 Sites Project Information, Capacity Interest and Facilities.

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

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

105 (l) “Federal Facilities” shall mean all facilities owned and operated by the  
106 United States and utilized for purposes of by the Sites Project, as listed in Exhibit B: Sites  
107 Project Information, Capacity Interest and Facilities.

108 (m) “Fixed O&M Costs” shall mean all costs, calculated in accordance with  
109 Generally Accepted Accounting Principles, incurred by the Sites Authority to administer,  
110 operate, and maintain the Sites Project that are not directly related to the amount of water  
111 conveyed into or released from Sites Reservoir. Fixed O&M Costs include all operating and  
112 maintenance costs that are not Variable O&M Costs. Additional Fixed O&M Costs include  
113 repair and replacement costs not charged to a capital account, and insurance and contributions to  
114 reasonably required reserves. Fixed O&M Costs exclude (A) depreciation and (B) amortization  
115 of intangibles or other bookkeeping entries of a similar nature. Fixed O&M Costs include all  
116 expenditures that are not Fixed Project Costs or Variable O&M Costs that are incurred by the  
117 Sites Authority.

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

122 (o) “Force Majeure” shall mean events beyond the reasonable control of a  
123 Party, including strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature,  
124 acts in compliance with any law, regulation or order (whether valid or invalid) by the United

125 States of America or any state thereof or any other domestic or foreign governmental body or  
126 instrument thereof having jurisdiction in the matter, in each case which directly, materially and  
127 adversely affects a Party’s ability to perform its obligations under this Agreement.

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

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

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

141 (s) “In-kind Services” shall mean eligible time and effort, real and personal  
142 property, and goods and services that may be applied to the cost-share, as defined, evaluated and  
143 documented in Article 5 and Exhibit H: Allowable Costs; Approval, Documentation, and Cost  
144 Allocation. In-kind Services may be applied to the cost-share, but the value of the in-kind  
145 contributions must be evaluated and documented as described in Article 45. Valuation of In-kind  
146 Services shall be in accordance with 2 CFR Part 200.

147 (t) “O&M Costs” shall mean Fixed O&M Costs and Variable O&M Costs

148 (u) “Refuge Water Points of Acceptance” shall mean locations at which the  
149 Sites Authority will make water supplies available to Reclamation for delivery to refuges as  
150 outlined in Exhibit D: Water Measurement and Delivery Points to this Agreement.

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

153 (w) “Participants” shall mean the parties listed as Participants in Exhibit B:  
154 Sites Project Information, Capacity Interest and Facilities.

155 (x) “Partner Agreements” shall mean any agreement entered into between the  
156 Sites Authority and another entity in accordance with which the Sites Authority has the right to  
157 divert, release and convey Sites Water to or from the Sites Project, as listed in Exhibit B: Sites  
158 Project Information, Capacity Interest and Facilities.

159 (y) “Partner Facilities” shall mean any facilities used by the Sites Authority to  
160 convey Sites Water to, or from, the Sites Owned Facilities in accordance with the Partner  
161 Agreements, and as further described in Exhibit B: Sites Project Information, Capacity Interest  
162 and Facilities (excluding the Federal Facilities).

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

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

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

176 (cc) “Sites Owned Facilities” shall mean the physical infrastructure and capital  
177 improvements for the Sites Project owned by the Sites Authority, including dams, reservoir(s),  
178 pipelines, pump stations, and other facilities necessary or appropriate for providing water supply  
179 and storage including the facilities listed as Sites Owned Facilities in Exhibit B: [Sites Project](#)  
180 [Information, Capacity Interest and Facilities](#), excluding Partner Facilities, Federal Facilities and  
181 the real property required for the Sites Project.

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

184 (ee) “Secondary Delivery Point” shall mean a location designated by  
185 Reclamation for delivery of Sites Water as described in [Section Article 67\(b\)](#).

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

191 (gg) “Sites Project” shall mean the Sites Project Facilities managed, owned and  
192 operated by the Sites Authority. Sites Project Facilities are outlined in Exhibit B: Sites Project  
193 Information, Capacity Interest and Facilities ~~to this Agreement~~.

194 (hh) “Sites Reservoir” shall mean the 1.5 million acre-feet off-stream storage  
195 reservoir near Maxwell, California.

196 (ii) “Sites Water” shall mean the water that is appropriated under the Sites  
197 Water Right.

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

200 (kk) “Storage Partner” shall mean the governmental agencies, water  
201 organizations, and others who have funded and received Capacity Interest and the associated  
202 Sites Water and listed as Storage Partners in Exhibit B: Sites Project Information, Capacity  
203 Interest and Facilities.

204 (ll) “Spend Plan” means the Spend Plan in Exhibit A, as prepared and  
205 amended in accordance with this Agreement.

206 (mm) “Water Purveyor” shall mean contractors with which Reclamation has  
207 agreements to convey water to refuges.

208 (nn) “Variable O&M Costs” shall mean the operation and maintenance costs  
209 incurred by the Sites Authority in connection with the Sites Project in an amount that is  
210 dependent upon and varies with the amount of Sites Water diverted, stored or released from the  
211 Sites Project Facilities to the Storage Partners, including but not limited to the cost of power  
212 (including pumping), replacement and other costs, funding of reserves in accordance with the  
213 Sites Authority policies and Generally Accepted Accounting Principles, and wheeling and other

214 conveyance costs for the use of Federal Facilities, Partner Facilities, and other facilities that are  
215 not Sites Owned Facilities.

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

218 **TERM OF AGREEMENT**

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

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

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

229 (c) This Agreement may be modified or amended upon written mutual  
230 agreement of the Parties. The Parties agree that any exhibit excluding the Spend Plan attached  
231 to this Agreement may be amended, updated, or replaced from time to time without requiring a  
232 formal amendment to this Agreement, provided that: (1) such amendment, update, or  
233 replacement is documented in writing and signed by authorized representatives of the Parties; (2)  
234 the written amendment expressly references this Agreement and the specific exhibit being  
235 amended; (3) upon execution by the Parties, the amended exhibit shall automatically replace the

236 prior version and be deemed incorporated into this Agreement as of the effective date stated in  
237 the amended exhibit; and (4) the amended exhibit shall not modify or affect any other terms or  
238 conditions of this Agreement. The Parties agree that the Sites Project's forecasted and actual  
239 revenue and expenditures in the Spend Plan may be modified by the Sites Authority to reflect  
240 real-time Sites Project activities without amendment to this Agreement.

241 **DEVELOPMENT, CONSTRUCTION AND OWNERSHIP OF THE SITES PROJECT**

242 3. (a) Subject to compliance with all applicable law and governmental approvals, the  
243 Sites Authority agrees to use commercially reasonable efforts to construct and complete the Sites  
244 Project, provided that (i) each Storage Partner provides its share of all required funding; (ii) the  
245 Sites Authority is not prohibited by applicable law from proceeding; and (iii) the Sites Authority  
246 and the Reservoir Management Board have not mutually determined the Sites Project to be  
247 infeasible and impractical.

248 (b) By this Agreement taking effect and the Sites Authority accepting payments  
249 from Storage Partners, the Sites Authority does not warrant that it will construct and achieve  
250 completion.

251 (c) Subject to Article 6, the Sites Authority shall own all Project Assets,  
252 (excluding the Partner Facilities, the Federal Facilities and Storage Partners' Capacity Interests).  
253 Reclamation shall maintain its rights to the sole ownership and operation of the Federal  
254 Facilities. Reclamation's participation in the Sites Project, including its execution of this  
255 Agreement, shall not confer upon the Sites Authority or any Participant any ownership or  
256 operational right in the Federal Facilities.

257

258

**FEDERAL PARTICIPATION IN THE SITES PROJECT**

259

260

261

262

263

4.4. The Sites Authority and Reclamation agree that Reclamation is granted, and Reclamation shall own a [16% Base Facilities Capacity Interest and 16% Downstream Facilities Capacity Interest] 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:

264

265

266

267

(a) Reclamation commits to the Sites 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 ShareInterest].

268

269

270

271

(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 ShareInterest] as further described in Article 9-10 of the Agreement.

272

273

274

(c) Reclamation's 16% of [Base Facilities Capacity Interest and 16% Downstream Facilities Capacity ShareInterest] shall be subject to Article 109 of the Agreement.

275

276

277

(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.

278

**COSTS ASSOCIATED WITH THE SITES PROJECT**

279

2.5. All Project Costs associated with this Agreement shall be compliant with Federal

280

law and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of

281

Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the

282

Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency

283

Act (31 U.S.C. § 1341 et seq.). Reclamation costs incurred after the Effective Date of this

284

Agreement shall only be credited, reimbursed or otherwise applied toward Reclamation's

285

participation in the Sites Project if they constitute Allowable Costs.

286

(a) Upon the determination of Completion of construction of the Sites Project,

287

Reclamation and the Sites Authority will meet and confer within a reasonable time frame to

288

complete a final accounting of the Sites Project to determine and mutually agree upon final

289

Capacity Interest allocation to Reclamation. The final Capacity Interest attributable to

290

Reclamation's final investment will be documented in Exhibit E: Lease and Sale of Capacity

291

Interest to this Agreement.

292

(b) The Parties agree:

293

(i) Pursuant to the Feasibility Memorandum of Understanding and

294

Pre-construction Memorandum of Agreement, Reclamation's costs prior to the Effective Date of

295

this Agreement as set out in the Spend Plan are considered Allowable Costs and will be credited

296

to Reclamation's share of costs associated with the Sites Project in accordance with this Article

297

45;

298

(ii) Reclamation's Allowable Costs after the Effective Date of this

299

Agreement as set out in the Spend Plan will be credited, reimbursed or otherwise applied toward

300

Reclamation's share of Project Costs in accordance with this Agreement.

301 (iii) Expected ongoing costs associated with the operation of the  
302 Sites Project includeing but are not limited to:

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

307 a. Fixed O&M Costs assigned annually to  
308 Reclamation shall be proportionate to Reclamation's Base Facilities Capacity Interest and  
309 associated Downstream Facilities Capacity Interest.

310 b. Variable O&M Costs assigned annually to  
311 Reclamation shall be proportionate to Reclamation's use of its Capacity Interest and associated  
312 Downstream Facilities Capacity Interest.

313 (2) Use of Reclamation's unused Downstream Facilities  
314 Capacity Interest: In the event a Storage Partner utilizes Reclamation's Downstream Facilities  
315 Capacity Interest in the Dunnigan Pipeline, the Sites Authority will develop and charge the  
316 Storage Partner a rate for such use commensurate with the use, unless otherwise directed by  
317 Reclamation. Proceeds received will be credited toward Reclamation's fixed and variable O&M  
318 cost.

319 (3) In-kind Services: Reclamation's In-kind Services will count  
320 toward Reclamation's contribution to Project Costs as described in this Agreement. In-kind  
321 Services shall only be credited if the scope, valuation methodology, and allocation basis are in  
322 accordance with Exhibit H: Allowable Costs; Approval, Documentation, and Cost Allocation.

- 323 (i) Any interest or fees related to financing activity of the Sites  
324 Authority and their Storage Partners shall not be paid by Reclamation.
- 325 (ii) The Sites Project is not part of the Central Valley Project, and as  
326 such, will not receive Project Use Energy.
- 327 (iii) Other non-allowable costs are described in Exhibit H: Allowable  
328 Costs; Approval, Documentation, and Cost Allocation.
- 329 (c) Within 90 days of this Agreement's execution, Reclamation and the Sites  
330 Authority will develop Exhibit A, a Spend Plan containing mutually agreeable terms for  
331 Reclamation to commit funding under § 4007 of the WIIN Act and to track costs and account for  
332 funds expended. ~~The Parties agree that the Sites Project's forecasted and actual revenue and~~  
333 ~~expenditures in Exhibit A: Spend Plan may be modified by the Sites Authority to reflect real-~~  
334 ~~time Sites Project activities without amendment to this Agreement.~~
- 335 (d) Reclamation and the Sites Authority will establish, at a minimum,  
336 quarterly check-ins to monitor actual expenditures related to the Sites Project, and to discuss  
337 other items, including but not limited to, funding and any additional agreements. If there is a  
338 deficiency in expenditures under Exhibit A the Spend Plan, Articles 9-10 and 10-11 shall apply.
- 339 (e) To the extent power, energy, or other revenue sources are generated by the  
340 Sites Project Facilities, sales of such power, energy and all other revenue sources will be  
341 managed by the Sites Authority. Any revenue received by the Sites Authority that is attributable  
342 to Reclamation's Capacity Interest or the use of Reclamation's Capacity Interest for the sale or  
343 other disposition of power, energy or other revenue sources shall be used to offset Reclamation's  
344 Variable O&M Costs, and to the extent that such revenues exceed Reclamation's Variable O&M  
345 Costs in a Year, any remaining revenues will be used to offset Reclamation's Fixed O&M Costs.

346 The Parties acknowledge and agree that the release of Sites Water has a higher priority than the  
347 generation of power by Sites Project Facilities and power generation is not guaranteed to  
348 Reclamation with the release of Sites Water.

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

350 ~~3.2.~~ Reclamation shall have first right of refusal for lease, purchase, and defaulted  
351 interests as described in Exhibit I: Governance.

352 **OPERATION OF SITES OWNED FACILITIES**

353 ~~4.6.~~ The Sites Authority will operate and maintain the Sites Owned Facilities in good  
354 faith, in accordance with Good Industry Practice and in accordance with all applicable  
355 agreements and Article ~~2022~~ provided that (i) the Storage Partners provide all funding required  
356 for operations and maintenance; and (ii) the Sites Authority and the Reservoir Management  
357 Board, have not mutually determined the continued operation of the Project is infeasible and  
358 impractical. The Sites Authority will protect the Sites Water Right and will manage, control, and  
359 protect Sites Water in good faith and in accordance with all applicable laws and regulations.

360 ~~(d)(a)~~ Sites Owned Facilities will be operated in a manner that avoids harm to the  
361 Central Valley Project, its water rights, and federal facilities.

362 ~~(e)(b)~~ Reclamation agrees to timely provide requests for Sites Water to be stored  
363 in Reclamation's Capacity Interest and Sites Water to be released from Reclamation's Capacity  
364 Interest to the Delivery Points. The Sites Authority agrees to take reasonable actions, consistent  
365 with applicable law and this Agreement, to achieve Reclamation's storage and release requests  
366 to the Delivery Points. Reclamation may specify a Secondary Delivery Point(s) in its release

367 request subject to the reasonable approval ~~of~~by the Sites Authority. The Sites Authority will take  
368 actions reasonably practicable to assist Reclamation in conveying their Sites Water to the  
369 Secondary Delivery Point(s). Reclamation shall bear all costs (monetary or otherwise) ~~and~~, the  
370 risk of loss in the Sites Water between the Delivery Point and Secondary Delivery Point(s).

371 ~~(f)~~(c) The Sites Authority will operate the Sites Project so as to maximize the  
372 water supply and water supply related environmental benefits while continuing to provide the  
373 flood control and recreational benefits. The diversion of Sites Water to storage will take priority  
374 over the release of water except in cases of severe flooding. The Sites Authority, in good faith,  
375 may temporarily discontinue or reduce the conveyance of Sites Water to, and release of Sites  
376 Water from, the Sites Project Facilities in various emergency and non-emergency situations to  
377 protect life and property as part of the flood control benefit.

378 ~~(g)~~(d) Reclamation shall make reasonable and beneficial use of Sites Water  
379 consistent with this Agreement.

380 ~~(h)~~(e) The Parties agree Reclamation bears the risk of loss or reduction in Sites  
381 Water on a pro-rata and substantially similar basis as other Storage Partners.

382 ~~(i)~~(f) The Sites Authority will operate and maintain the Sites Project in full  
383 compliance with the terms of this Agreement and in such a manner that the Sites Project remains  
384 in good and efficient condition, subject to exercise of discretion to fund and carry out Capital  
385 Improvements.

386 ~~(j)~~(g) Reclamation's share of Sites Water diversions will be proportional with its  
387 Capacity Interest unless a lesser amount is requested by Reclamation.

388 ~~(k)~~(h) Subject to Section ~~(i)~~f belowabove, the Sites Authority or Reclamation  
389 may request Capital Improvements to provide an added benefit to the Sites Project. Such Capital

390 Improvements shall be subject to approval by the Sites Authority. The Sites Authority will  
391 prepare and distribute a document detailing the anticipated Project Costs and benefits of the  
392 proposed Capital Improvements.

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

397 ~~(m)~~(j) In the event that proposed Capital Improvements are not approved by the  
398 Sites Authority, other Storage Partners may elect to continue with the Capital Improvements.  
399 Those Project costs and benefits associated with such Capital Improvements shall be allocated  
400 only to the subset of Storage Partners electing to proceed with the Capital Improvements in  
401 accordance with an agreement among the Sites Authority and such Storage Partners.

402 ~~(n)~~(k) The Sites Authority will deliver Sites Water to the Refuge Water Points of  
403 Acceptance, as described in Exhibit D: Water Measurement and Delivery Points, to meet the  
404 Sites Project's IL4 Water obligations pursuant to the State of California's investment, without  
405 any cost to Reclamation. Reclamation will deliver Sites Water from the Refuge Water Points of  
406 Acceptance to the Refuge Water Points of Delivery.

407 ~~(o)~~(l) The Parties, along with the California Department of Water Resources,  
408 will execute Exhibit G: Agreement Between the Department of Water Resources of the State of  
409 California, The United States Bureau of Reclamation, and The Sites Project Authority to  
410 Coordinate in the Operations of the Sites Reservoir Project to identify coordination processes for  
411 Sites Water diversions and releases. The Parties, along with the California Department of Water  
412 Resources, will consider changes necessary to represent conditions at the time of Completion and

413 execute an amendment to Exhibit G: Agreement Between the Department of Water Resources of  
414 the State of California, The United States Bureau of Reclamation, and The Sites Project  
415 Authority to Coordinate in the Operations of the Sites Reservoir Project as needed.

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

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

421 ~~(r)~~(o) The Sites Authority will be responsible for providing power to operate and  
422 maintain the Sites Owned Facilities and to convey Sites Water to the Delivery Points.

423 ~~(s)~~(p) The Sites Authority and Reclamation each agree that Reclamation shall be  
424 allowed, at reasonable times and upon reasonable prior notice, and at Reclamation's expense, to  
425 enter onto Sites Owned Facilities for reasonable purposes in accordance with the Sites  
426 Authority's reasonable safety regulations and policies and subject to applicable law and  
427 governmental approvals.

428 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

429 5.7. Reclamation will serve as the ESA Section 7 consultation lead for the initial  
430 construction and water-related operation of Sites Project Facilities. Reclamation and the Sites  
431 Authority will meet and confer on future Sites Project activities to determine the most  
432 appropriate ESA consultation approach and lead agency consistent with applicable law and  
433 regulation.

434 ~~(+)(a)~~ The Parties agree that Reclamation will consult on the operation of the  
435 Sites Project as ESA Section 7 lead, treating the operation of the Sites Project as a distinct  
436 component related to the Long Term Operations of the State and Federal Projects. Reclamation  
437 intends to seek an incidental take statement specific to effects from the operation of the Sites  
438 Project.

439 ~~(+)(b)~~ It is the understanding of the Parties that future reinitiation of consultation  
440 on the operations of the Central Valley Project after an initial incidental take statement for the  
441 effects from the operations of the Sites Project does not automatically require a reinitiation of  
442 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of  
443 consultation on the Sites Project to jointly review, among other things, the information before  
444 each agency, potential approaches, and possible outcomes. In any consultation that has the  
445 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the  
446 Sites Authority, the United States Fish and Wildlife Service (USFWS), and National Marine  
447 Fisheries Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project  
448 while avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is  
449 required, the specific changes contemplated for the Sites Project must meet one of the criteria in  
450 accordance with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties  
451 will cooperate in the preparation and negotiation of the reinitiation of consultation and the  
452 resulting revised incidental take statement specific to the Sites Project.

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

457 ~~(w)~~(d) Through the development, execution, and implementation of a  
458 Programmatic Agreement to address adverse effects to historic properties, Reclamation will  
459 remain in compliance with Section 106 of the National Historic Preservation Act of 1966, as  
460 amended for the construction of the Sites Project. The Parties agree to meet and confer as  
461 necessary to ensure the Sites Project's Section 106 construction compliance is timely  
462 implemented throughout the duration of construction.

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

468 **EXCUSED PERFORMANCE**

469 ~~6.8.~~ The Sites Authority intends to enter into other agreements that will facilitate the  
470 operations and construction of the Sites Project and in performing its obligations under such  
471 agreements, the Sites Authority intends to comply with the terms of this Agreement; and

472 ~~(y)~~(a) Upon the occurrence of an event of Force Majeure, the Sites Authority  
473 shall be excused from its obligations under this Agreement for the period during which it is  
474 unable to comply with such obligations as a result of such event of Force Majeure; and  
475 Reclamation shall be excused from its obligations under this Agreement for the period during  
476 which it is unable to comply with such obligations as a result of the event of Force Majeure,  
477 other than the payment of Project Costs described in this Agreement, which obligations are not  
478 subject to reduction or abatement, unless the event of Force Majeure specifically limits

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

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

#### 486 **FAILURE OF TIMELY PAYMENT**

487  
488 ~~7.9.~~ Pursuant to WIIN Act § 4007, Reclamation may contribute up to twenty-five (25)  
489 percent of the Sites Project. Reclamation shall diligently pursue funding —within its authorities—  
490 sufficient to meet its obligations under this Agreement in a timely manner.

491 ~~(aa)~~(a) Fixed Project Costs for Completion.

492 (i) Reclamation shall diligently pursue funding—within its  
493 authorities—so as to ensure there are sufficient funds appropriated to cover two ~~(2)~~ Yyears of  
494 Fixed Project Costs, based on costs anticipated to be incurred during the following two (2) Yyear  
495 period based on the Spend Plan. If sufficient funds have not been appropriated to cover such  
496 costs, then Reclamation shall develop a plan to pursue funding for Fixed Project Costs sufficient  
497 to meet its obligations in a timely manner and the Parties shall meet and confer to review such  
498 plan.

499 (ii) The Sites Authority will provide Reclamation with a billing  
500 statement for Reclamation's share of Fixed Project Costs, based on such costs anticipated to be

501 incurred during the following one (1) Yyear based on the Spend Plan, and documentation of any  
502 allocated funds shall be due within 30 days of issuance of the billing statement.

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

506 (iv) Consistent with Article ~~X-25[FUNDS TO BE PROVIDED]~~, if  
507 Reclamation has not provided documentation of sufficient allocated funds to the Authority  
508 within 90 days of issuance of the billing statement, the Sites Authority shall make written  
509 demand upon Reclamation. The written demand shall identify the portion of Reclamation's  
510 Capacity Interest that is at risk of forfeiture, being that portion of Reclamation's Capacity  
511 Interest for which Reclamation has not yet provided such documentation, based on the current  
512 Spend Plan and in accordance with this Article ("Unpaid Capacity Interest"). If such  
513 documentation is not made available to the Sites Authority within an additional 90 days from the  
514 date of such demand, Reclamation is deemed to have not made timely payment and forfeits the  
515 Unpaid Capacity Interest.

516 (v) Upon a forfeiture of Unpaid Capacity Interest by Reclamation:

- 517 i. The Sites Authority shall use its best efforts to  
518 facilitate a sale of Reclamation's applicable Unpaid  
519 Capacity Interest.
- 520 ii. The other non-defaulting Storage Partners holding a  
521 Capacity Interest in the same Sites Project Facilities  
522 (the Base Facilities and/or the Downstream  
523 Facilities, as applicable) shall have a "right of first

524 offer" to assume all or a portion of Reclamation's  
525 Unpaid Capacity Interest and related financial  
526 obligations under this Agreement, at a price  
527 mutually agreed between the Sites Authority and  
528 the Storage Partner purchasing all or a portion of  
529 Reclamation's Unpaid Capacity Interest.

530 iii. Subject to Section (iv) below, in the event that the  
531 Sites Authority is unable to facilitate a sale of all of  
532 Reclamation's Unpaid Capacity Interest to other  
533 non-defaulting Storage Partners in accordance with  
534 Section (ii) above, the Sites Authority may make  
535 such Unpaid Capacity Interest available to entities  
536 other than the non-defaulting Storage Partners, and  
537 may enter into an agreement with such entities for  
538 the purchase of all or a portion of Reclamation's  
539 Unpaid Capacity Interest and the assumption of the  
540 related obligations under this Agreement.

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

545 c. Notwithstanding that all or any portion of Reclamation's  
546 Unpaid Capacity Interest is so sold, Reclamation shall remain liable to the Sites Authority for

547 any costs incurred prior to said sale except that such liability shall be discharged to the extent  
548 that the buyer undertakes that liability. In the event of such sale, Reclamation shall not remain  
549 liable for the future Sites Project Costs associated with such sold Capacity Interest.

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

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

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

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

568 (iii) The Sites Authority shall provide Reclamation a billing statement  
569 for Reclamation's share of Fixed Project Costs and Fixed O&M Costs, based on such costs

570 anticipated to be incurred during the one (1) year period starting one (1) years after the date of  
571 the billing statement, which shall be due within 30 days of issuance of the billing statement. .

572 (iv) Consistent with Article ~~X [FUNDS TO BE PROVIDED]~~25, if  
573 Reclamation has not made sufficient funding available to the Sites Authority within 90 days of  
574 issuance of the billing statement, the Sites Authority shall make written demand upon  
575 Reclamation. The written demand shall identify the payment shortfall (“Delinquent Payment  
576 Amount”). If sufficient funding is not made available to the Sites Authority within 90 days from  
577 the date of such demand, Reclamation is deemed to have not made timely payment and is  
578 delinquent.

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

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

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

591 iii. Reclamation’s right of first refusal in Article ~~5-6~~ is  
592 suspended until its account is no longer delinquent.

593 ~~(ee)(c)~~ Variable O&M Costs.

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

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

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

606 a. Consistent with Article ~~25X [FUNDS TO BE~~  
607 ~~PROVIDED]~~, if Reclamation has not made sufficient funding available to the Sites Authority  
608 within 30 days of issuance of the billing statement, the Sites Authority shall make written  
609 demand upon Reclamation. The written demand shall identify the payment shortfall (“Delinquent  
610 Amount”). If sufficient funding is not made available to the Sites Authority within 30 days from  
611 the date of such demand, Reclamation is deemed to have not made timely payment and is in  
612 delinquency.

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

614 i. The Sites Authority shall use its best efforts to  
615 facilitate a sale(s) of any or all Sites Water from Reclamation’s Capacity Interest to cover the

616 Delinquent Amount, including the reimbursement of the Sites Authority for all reasonable out-  
617 of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or  
618 sustained by the Sites Authority in connection with the sale of Sites Water to cover  
619 Reclamation's De~~linquent~~faulted Amount;

620 ii. Reclamation shall have no right to utilize Sites  
621 Water in its Capacity Interest, no right to otherwise utilize its Capacity Interest, and agrees to  
622 allow other Storage Partners to utilize its Capacity Interest until its account is no longer in  
623 default; and

624 iii. Reclamation's right of first refusal in Article ~~5-6~~ is  
625 suspended until its account is no longer in default.

626 ~~(dd)~~(d) Reclamation's Fixed O&M Costs and Variable O&M Costs shall be  
627 determined in accordance with Exhibit ~~F-1~~C: Payment Formulas.

628 ~~(ee)~~(e) Remedies: In addition to the other remedies set forth in Article ~~10~~11, upon  
629 the occurrence of an event of delinquent payment in accordance with this Agreement, any Party  
630 shall be entitled to proceed to protect and enforce the rights in a court of competent jurisdiction,  
631 consistent with Federal law and without waiving the United States' sovereign immunity from  
632 suit.

633 **WIND-UP**

634 3-10. If the Sites Authority and the Reservoir Management Board determine, that the  
635 Sites Project will be terminated before Completion because of infeasibility, impracticality,  
636 inability, failure of the Participants to fund the Sites Project, or failure of the Sites Authority to  
637 construct the Sites Project, the Sites Authority shall adopt a resolution to wind-up the Sites Project  
638 (a "Wind-Up Resolution").

639 (a) Upon adoption of a Wind-Up Resolution by the Sites Authority, Storage  
640 Partners shall have a pro-rata right of first refusal to the Project Assets (excluding the Partner  
641 Facilities and Federal Facilities) based on their paid Fixed Project Costs at a fair market value as  
642 determined by a majority of a panel of three (3) licensed appraisers, including (i) any partially  
643 constructed or completed physical works or assets that divert Sites Water into or release Sites  
644 Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests, or  
645 obligations related to the Sites Project. If any Storage Partners proceed with purchase of Project  
646 Assets, then the Sites Authority and such purchasing Storage Partners shall work in good faith to  
647 close upon the sale of such interests within 180 days after the appraiser panel's determination of  
648 fair market value.

649 (b) Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites  
650 Authority shall appoint a winding-up agent (the "**Winding-Up Agent**"). The Winding-Up Agent  
651 shall, upon expiration of the time for the Storage Partners to accept the offer described in  
652 subsection (a), prepare a plan for disposition of the Project Assets, which shall include plans for  
653 mitigating or remediating any hazardous or unsafe conditions that are a direct result of the  
654 construction of the Sites Project. Upon approval of the Sites Authority, the Winding-Up Agent  
655 shall implement the disposition of the Project Assets in accordance with the plan for disposition,  
656 including the disposition of unexpended funds held by the Sites Authority to the Storage Partners.  
657 Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable  
658 manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents  
659 then held by the Sites Authority shall first be used, based on the pro-rata share of paid Sites Project  
660 Costs, to pay the following amounts in the following order of priority (i) repay debts of the Sites  
661 Authority incurred for funding the Sites Project; provided, however, that any moneys contributed

662 by a self-funding Storage Partner and held at the time of a winding-up shall not be used to repay  
663 debts of the Sites Authority incurred for financing the Sites Project, (ii) pay the costs of mitigating  
664 or remediating hazardous or unsafe conditions located on the Sites Project site pursuant to the plan  
665 for disposition of the Project Assets, and (iii) distribute cash to the Storage Partners having satisfied  
666 their Sites Project Costs, provided that any unexpended funds which the Sites Authority received  
667 from Reclamation will be returned to Reclamation. Any remaining funds shall then be distributed  
668 to the Storage Partners based on their proportional respective paid Sites Project Costs. In the event  
669 Reclamation has advanced funding above the Capacity Interest specified in this Agreement,  
670 Reclamation will be reimbursed at that equivalent pro-rata share. Subject to the Sites Authority  
671 Records Management Policy, Storage Partners shall be entitled to copies of any work products  
672 developed by the Sites Authority or its consultants on behalf of the Storage Partners, and the Sites  
673 Authority shall convey to the Storage Partners, as tenants in common with all other Storage  
674 Partners who are not in default under the Benefits and Obligations Contract, a pro rata interest  
675 based on the paid Fixed Project Costs in all real and personal property remaining after  
676 implementation of the plan for disposition of the Project Assets in accordance with this Section.

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

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

## 682 **DISPUTE RESOLUTION**

683 8.11. Should any dispute arise concerning any provision(s) of this Agreement, or the  
684 Parties' rights and obligations thereunder, the United States and the Sites Authority shall meet

685 and confer in an attempt to informally resolve the dispute at the staff level. Both Parties agree to  
686 work in good faith to resolve any disputes which may arise. If staff from the Parties are unable to  
687 resolve the dispute, the dispute will be elevated to the Area Manager for Reclamation and  
688 Executive Director or designee of the Sites Authority. If the Parties are unable to resolve the  
689 dispute at this level, then the dispute will be elevated to the Regional Director of Reclamation  
690 and the Executive Director of the Sites Authority. If the Parties are unable to resolve the dispute  
691 at this level, the Parties may submit disputes to a third-party mediator agreed to by the Parties.  
692 Either Party may seek relief in a court of competent jurisdiction, consistent with Federal law and  
693 without waiving the United States' sovereign immunity from suit. Prior to the Sites Authority  
694 commencing any legal action, or the Contracting Officer referring any matter to the Department  
695 of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to  
696 take such action; *Provided*, That such notice shall not be required where a delay in commencing  
697 an action would prejudice the interests of the Party that intends to file suit. During the thirty (30)  
698 day notice period, the Parties shall meet and confer in an attempt to resolve the dispute. Except  
699 as specifically provided, nothing herein is intended to waive or abridge any right or remedy that  
700 the Sites Authority or the United States may have.

701 ~~(e)~~(a) Reclamation shall have no responsibility to participate in or resolve  
702 disputes between the Sites Authority and any of the Storage Partners regarding this Agreement.

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

706

**OPINIONS AND DETERMINATIONS**

707

9.12. Where the terms of this Agreement provide for actions to be based upon the

708

opinion or determination of either Party to this Agreement, said terms shall not be construed as

709

permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

710

determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly

711

reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,

712

or unreasonable opinion or determination. Each opinion or determination by either Party shall be

713

provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall

714

affect or alter the standard of judicial review applicable under Federal law to any opinion or

715

determination implementing a specific provision of Federal law embodied in statute or

716

regulation.

717

~~(g)~~(a) The Contracting Officer shall have the right to make determinations

718

necessary to administer this Agreement that are consistent with the provisions of this Agreement,

719

the laws of the United States, and the rules and regulations promulgated by the Secretary. Such

720

determinations shall be made in consultation with the Sites Authority to the extent reasonably

721

practicable.

722

~~(h)~~(b) Nothing in this Agreement, or performance hereunder, constitutes a

723

waiver of the Parties' respective positions, opinions, or interpretations of California water rights

724

law, whatever they may be, in circumstances where there is no mutual agreement, as applicable

725

herein, for the use of the Sites Project Facilities.

726

**WATER MEASUREMENT**

727

~~10.13.~~ The Sites Authority is responsible for the measurement and recording of

728

all Sites Water delivered pursuant to this Agreement up to and including the Delivery Point, and

729

any additional location(s) mutually agreed to in writing by the Sites Authority and Reclamation.

730

~~(+)(a)~~ Prior to Completion, the Sites Authority shall ensure that the water

731

measuring devices as shown in Exhibit B: Sites Project Information, Capacity Interest and

732

Facilities are installed and operating properly. The Sites Authority will be responsible for

733

installing, operating, maintaining, and repairing all such measurement devices. The equipment

734

and methods used to make such measurement and recordings shall be in accordance with Good

735

Industry Practices. Upon request of either party to this Agreement, the Sites Authority shall

736

investigate, or cause to be investigated, the accuracy of such and shall take any necessary steps to

737

adjust any errors appearing therein. For any period of time when accurate measurements have not

738

been made, the Sites Authority shall consult with Reclamation prior to making a final

739

determination of the quantity delivered for that period of time.

740

~~(+)(b)~~ After delivery, Reclamation shall ensure that Sites Water delivered under

741

this Agreement is measured and supports the Sites Authority's applicable reporting on Sites

742

Water and Sites Water Right. The water measuring devices or water measuring methods of

743

comparable effectiveness must be acceptable to the Sites Authority. Reclamation shall be

744

responsible for installing, operating, maintaining, and repairing all such measuring devices and

745

implementing all such water measuring methods at no cost to the Sites Authority. On or before

746

the 20th calendar day of each month, Reclamation shall provide the Sites Authority with the

747

written quantity of water taken during the preceding month under this Agreement.

748

**SEVERABILITY**

749

~~11.14.~~ In the event that any one or more of the provisions contained herein is, for

750

any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality

751

or unenforceability will not affect any other provisions of this Agreement, but this Agreement is

752

to be construed as if such invalid, illegal or unenforceable provisions had never been contained

753

herein, unless the deletion of such provision or provisions would result in such a material change

754

so as to cause the fundamental benefits afforded the Parties by this Agreement to become

755

unavailable or materially altered.

756

**HOLD HARMLESS**

757

~~12.15.~~ (a) The Sites Authority shall indemnify, defend, and hold harmless the

758

United States, its officers, agents, and employees from and against any and all claims, damages,

759

losses, liabilities, and expenses arising out of or resulting from the United States' work under this

760

~~agreement~~ Agreement that constitutes Allowable Costs, provided the claims, damages, losses,

761

liabilities, or expenses are not the result of any willful or negligent acts or omissions on the part

762

of the United States The Sites Authority will not assert that Reclamation, its Director, officers,

763

agents or employees, are liable for damages of any nature whatsoever arising out of any actions

764

or omissions by the Sites Authority, its directors, officers, agents or employees, related to the

765

Sites Authority's performance of this Agreement, where such liability is caused by an act, error

766

or omission of the Sites Authority, its director, officers, agents or employees.

767

(b) The Parties agree that the Sites Authority, its officers, agents, and

768

employees will not be liable for any claims arising out of or resulting from the Unites States'

769

control, carriage, handling, use, disposal, or distribution of Sites Water beyond the Delivery

770 Point, except for any damage or claims arising in connection with (i) acts or omissions of the  
771 Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of  
772 creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites  
773 Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the  
774 Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims  
775 resulting from a malfunction of a Sites Project Facility.

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

780 **NOTICES**

781 ~~13.16.~~ Any notice, demand, or request authorized or required by this Agreement  
782 shall be deemed to have been given, on behalf of the Sites Authority, when mailed, postage  
783 prepaid, or delivered to the Regional Director, California Great Basin Region, Bureau of  
784 Reclamation, 2800 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States,  
785 when mailed, postage prepaid, or delivered to the Sites Authority, 122 Old Highway 99 West,  
786 Maxwell, CA 95955.

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

788 ~~14.17.~~ The expenditure or advance of any money or the performance of any  
789 obligation of the United States under this Agreement shall be contingent upon appropriation or  
790 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Sites

791 Authority from any obligations under this Agreement. No liability shall accrue to the United  
792 States in case funds are not appropriated or allotted.

793 **OFFICIALS NOT TO BENEFIT**

794 ~~15.18.~~ No Member of or Delegate to the Congress, Resident Commissioner, or  
795 official of the Sites Authority shall benefit from this Agreement other than as a water user or  
796 landowner in the same manner as other water users or landowners.

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

798 ~~16.19.~~ (a) The provisions of this Agreement shall apply to and bind the successors  
799 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or  
800 interest therein by either Party shall be valid until approved in writing by the other Party.  
801 (b) Reclamation shall not unreasonably withhold its consent to an assignment  
802 of the Sites Authority's rights and obligations under this Agreement to a third party.

803 **BOOKS, RECORDS, AND REPORTS**

804 ~~17.20.~~ The Sites Authority shall establish and maintain accounts and other books  
805 and records pertaining to administration of the terms and conditions of this Agreement, including  
806 the Sites Authority's financial transactions; water supply data; Sites Project operation,  
807 maintenance, and replacement logs; Sites Project land and rights-of-way use agreements; the  
808 water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other  
809 matters that the Contracting Officer may require. Reports shall be furnished to the Contracting  
810 Officer in such form and on such date or dates as the Contracting Officer may require. Subject to  
811 applicable Federal laws and regulations, each Party to this Agreement shall have the right during

812 office hours to examine and make copies of the other Party's books and records relating to  
813 matters covered by this Agreement.

814 **COMPLIANCE WITH LAWS**

815 ~~18.21.~~(a) The Parties agree that the use of Federal Facilities pursuant to this  
816 Agreement is subject to Federal Reclamation law and the rules and regulations promulgated by  
817 the Secretary of the Interior under Federal Reclamation law.

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

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

829 **COMPLIANCE WITH CIVIL RIGHTS**

830 ~~19.22.~~(a) The Sites Authority shall comply with Title VI of the Civil Rights Act of  
831 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title  
832 V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
833 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub.  
834 L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
835 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
836 Interior and/or Bureau of Reclamation.

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

844 (c) The Sites Authority makes this ~~agreement~~ Agreement in consideration of  
845 and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts,  
846 or other Federal financial assistance extended after the date hereof to the Sites Authority by the  
847 Bureau of Reclamation, including installment payments after such date on account of  
848 arrangements for Federal financial assistance which were approved before such date. The Sites  
849 Authority recognizes and agrees that such Federal assistance will be extended in reliance on the  
850 representations and agreements made in this ~~article~~ Article and that the United States reserves the  
851 right to seek judicial enforcement thereof.

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

#### 854 **REPORTING REQUIREMENTS**

855 ~~20.23.~~ The Sites Authority shall provide Reclamation with progress and financial  
856 status reports to support disbursements under the Spend Plan and reporting requirements under  
857 Federal Reclamation law.

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

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

870 **FUNDS TO BE PROVIDED**

871 ~~21.24.~~ In accordance with the Prompt Payment Act, Reclamation shall transmit  
872 payment to the Sites Authority in accordance with Exhibit A the Spend Plan, Article 9-10 and  
873 Article 10-11 and subject to Article 16-18 of this Agreement. Any applicable interest penalties  
874 shall be paid by Reclamation and shall not be credited towards Reclamation's share of Project  
875 Costs.

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

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

887 the Contracting Officer shall have the final determination of how and when installments are  
888 transmitted.

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

895 (d) The Sites Authority will provide Reclamation with an invoice for  
896 Reclamation's share of Fixed Project Costs, based on such costs anticipated to be incurred during  
897 the following quarter based on the Spend Plan, and payment shall be due within 30 days of  
898 issuance of the invoice.

899 (e) If delayed payment or payment procedures imposed by Reclamation under  
900 this Agreement require the Sites Authority or Participants to incur additional costs, such as any  
901 resulting interest expense, financing charges, or related fees, additional costs so incurred shall be  
902 reimbursed in full by Reclamation. Such costs shall not be credited toward Reclamation's share  
903 of Sites Project Costs.

904 **MEDIUM FOR TRANSMITTING PAYMENTS**

905 ~~22.25.~~ (a) All payments from the Sites Authority to the United States under this  
906 Agreement shall be by the medium requested by the United States on or before the date payment  
907 is due. The required method of payment may include checks, wire transfers, or other types of  
908 payment specified by the United States.

909 (b) Upon execution of the Agreement, the Sites Authority shall furnish the  
910 Contracting Officer with the Sites Authority's taxpayer's identification number (TIN). The

911 purpose for requiring the Sites Authority's TIN is for collecting and reporting any delinquent  
912 amounts arising out of the Sites Authority's relationship with the United States.

913

914

**AGREEMENT DRAFTING CONSIDERATIONS**

915 ~~23.26.~~ This Agreement has been negotiated and reviewed by the ~~parties~~ Parties

916 hereto, each of whom is sophisticated in the matters to which this Agreement pertains. The

917 double-spaced Articles of this Agreement have been drafted, negotiated, and reviewed by the

918 ~~parties~~ Parties, and no one ~~party~~ Party shall be considered to have drafted the stated articles.

919 Single-spaced articles are standard articles pursuant to Reclamation policy.

920 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day

921 and year first above written.

922 (SEAL)

THE UNITED STATES OF AMERICA

923  
924  
925  
926

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

927

SITES AUTHORITY

928  
929  
930

Attest:

By: \_\_\_\_\_  
Chair, Board of Directors

931 \_\_\_\_\_