

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
California

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

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- Exhibit A: Spend Plan
- Exhibit B: Sites Project Information, Capacity Interest and Facilities
- Exhibit C: Payment Formulas
- Exhibit D: Refuge Donation Agreement
- 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

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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 “Sites  
9   Authority”, duly organized, existing, and acting pursuant to the laws of California. The United  
10   States and the Sites Authority are referred to collectively as the “Parties,” and individually as a  
11   “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 Authority, previously known as the Sites Joint Powers  
23 Authority, was formed as a California joint powers authority operating under and by virtue of  
24 Section 6500 et seq., of the California Government Code and formed in accordance with the  
25 Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be modified  
26 from time to time, with the primary purpose of designing, constructing, owning, operating and  
27 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 which determined the potential  
30 Federal and non-Federal interest in the Sites Project; and

31 [5<sup>th</sup>] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with  
32 State water rights laws, the right to use the capacity of a State-led storage project for which the  
33 Secretary of the Interior has entered into an agreement under this subsection shall be allocated in

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

36 [6<sup>th</sup>] WHEREAS, pursuant to § 4007(f)(1) of the WIIN Act, the California Water  
37 Commission determined that the State-led Sites Project is consistent with the California Water  
38 Quality, Supply, and Infrastructure Improvement Act; and

39 [7<sup>th</sup>] WHEREAS, on November 2, 2023, the Sites Authority and Reclamation released  
40 a joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter  
41 “FEIR/FEIS”, for the Project; and the Sites Authority certified the FEIR/FEIS and adopted the  
42 Project with Board Resolution 2023-02; and on January 23, 2026 Reclamation signed its Record  
43 of Decision for the construction and operation of the Sites Project; and

44 [8<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into and comply with contracts  
45 with State and local agencies pursuant to which the State and local agencies will receive certain  
46 benefits (including water service) and have certain obligations related to the Sites Project. These  
47 include (i) Exhibit G: Agreement Between the Department of Water Resources of the State of  
48 California, the United States Bureau of Reclamation, and the Sites Project Authority to  
49 Coordinate in the Operations of the Sites Reservoir Project; (ii) Public Benefits Agreements with  
50 California State Agencies; (iii) Proposition 1 Water Storage Investment Program Contract with  
51 the California Water Commission; and (iv) Benefits and Obligations Contract.

52 [9<sup>th</sup>] WHEREAS, the Sites Authority intends to enter into and comply with Partner  
53 Agreements with agencies to convey water related to and from the Sites Project.

54 [10<sup>th</sup>] WHEREAS, the Sites Authority entered into the Colusa County / Sites Authority  
55 Memorandum of Understanding and intends for Sites Water originating from Funks Creek and

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

58

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

60 **DEFINITIONS**

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

63 (a) "Allowable Costs" shall mean those costs eligible for reimbursement or  
64 credit under this Agreement as defined and subject to Exhibit H.

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

68 (c) "Base Facilities" shall mean the Sites Owned Facilities or other facilities  
69 available to all Storage Partners listed as Base Facilities in Exhibit B.

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

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

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

85 (g) “Central Valley Project” or “CVP” shall mean the Central Valley Project  
86 owned by the United States and managed by the Department of the Interior, Bureau of  
87 Reclamation.

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

92 (i) “Delivery Point” shall mean Funks Reservoir or Terminal Regulating  
93 Reservoir, at which the Sites Authority will make water supplies available to Reclamation.

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

96 (k) "Downstream Facilities Capacity Interest" shall mean the undivided  
97 capacity right to convey Sites Water through Downstream Facilities for the delivery of Sites  
98 Water, consistent with this Agreement and the Partner Agreements, in the pro-rata share set out  
99 for each Storage Partner in Exhibit B, subject to the Sites Water Right, applicable law and  
100 governmental approvals.

101 (l) “Federal Facilities” shall mean all facilities owned by the United States, as  
102 listed in Exhibit B.

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

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

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

123 (p) “Generally Accepted Accounting Principles” shall mean such accepted  
124 accounting practices as established at the time for use at public agencies in the United States of  
125 America, consistently applied.

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

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

136 (s) “In-kind Services” shall mean eligible time and effort, real and personal  
137 property, and goods and services that may be applied to cost-share, as defined, evaluated and  
138 documented in Article 5 and Exhibit H. Valuation of In-kind Services shall be in accordance  
139 with 2 CFR Part 200.

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

141 (u) “Participants” shall mean the parties listed as Participants in Exhibit B.

142 (v) “Partner Agreements” shall mean any agreement between the Sites  
143 Authority and another entity for the diversion, release and conveyance of Sites Water to or from  
144 the Sites Project, as listed in Exhibit B.

145 (w) “Partner Facilities” shall mean any facilities, excluding Federal Facilities,  
146 used by the Sites Authority to convey Sites Water to, or from, the Sites Owned Facilities in  
147 accordance with the Partner Agreements, and as further described in Exhibit B.

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

154 (y) “Refuge Water Points of Acceptance” shall mean locations at which the  
155 Sites Authority will make water supplies available to Reclamation for delivery to refuges as  
156 outlined in Exhibit D.

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

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

163 (bb) “Secondary Delivery Point” shall mean a location designated by  
164 Reclamation for delivery of Sites Water as described in Article 7(b).

165 (cc) “Sites Authority” shall mean a California Joint Powers Authority  
166 operating under and by Section 6500 et seq., of the California Government Code and formed in  
167 accordance with the Sites Joint Powers Authority Agreement, as such agreement may be

168 modified from time to time. The Sites Authority was established for the purpose of designing,  
169 constructing, owning, operating and maintaining the Sites Project.

170 (dd) “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 the  
174 real property required for the Sites Project.

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

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

180 (gg) “Sites Project” shall mean the Sites Project Facilities utilized by the Sites  
181 Authority for the purpose of providing storage and conveyance of water for use by Storage  
182 Partners, and other benefits, as such project may be modified from time to time.

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

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

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

189 (kk) “Storage Partner” shall mean the governmental agencies, water  
190 organizations, and others who have funded and received Capacity Interest and the associated  
191 Sites Water, as listed in Exhibit B.

192 (ll) “Water Purveyor” shall mean contractors with which Reclamation has  
193 agreements to convey water to refuges.

194 (mm) “Variable O&M Costs” shall mean the operation and maintenance costs  
195 incurred by the Sites Authority in connection with the Sites Project in an amount that is  
196 dependent upon and varies with the amount of Sites Water diverted, stored or released from the  
197 Sites Project Facilities to the Storage Partners, including but not limited to the cost of power  
198 (including pumping), replacement and other costs, funding of reserves in accordance with the  
199 Sites Authority policies and Generally Accepted Accounting Principles, and wheeling and other  
200 conveyance costs for the use of Federal Facilities, Partner Facilities, and other facilities that are  
201 not Sites Owned Facilities.

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

204 **TERM OF AGREEMENT**

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

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

210 (b) Reclamation and the Sites Authority shall jointly review this Agreement,  
211 which review shall be performed at least every five (5) Years. A more frequent review will occur  
212 if determined to be appropriate by the Parties. The review shall compare the relative success  
213 which each Party has had in meeting its objectives, as outlined in this Agreement and this  
214 Agreement's exhibits, including, but not limited to, those objectives in Exhibit A.

215 (c) This Agreement may be modified or amended upon written mutual  
216 agreement of the Parties. The Parties agree that any exhibit attached to this Agreement,  
217 excluding Exhibit A, may be amended, updated, or replaced without requiring a formal  
218 amendment to this Agreement, provided that: (1) such amendment, update, or replacement is  
219 documented in writing and signed by authorized representatives of the Parties; (2) the written  
220 amendment expressly references this Agreement and the specific exhibit being amended; (3)  
221 upon execution by the Parties, the amended exhibit shall automatically replace the prior version  
222 and be deemed incorporated into this Agreement as of the effective date stated in the amended  
223 exhibit; and (4) the amended exhibit shall not modify or affect any other terms or conditions of  
224 this Agreement. The Parties agree that the Sites Project's forecasted and actual revenue and  
225 expenditures in Exhibit A may be modified without amendment to this Agreement by the Sites  
226 Authority quarterly to reflect Sites Authority activities, provided that any modifications to  
227 Allowable Costs shall be made in accordance with Exhibit H. Exhibit A shall contain mutually  
228 agreeable terms for Reclamation to commit funding under § 4007 of the WIIN Act and to track  
229 Fixed Project Costs related to Completion and account for funds expended.

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

231 ~~4.3.~~ (a) Subject to compliance with all applicable law and governmental approvals, the  
232 Sites Authority agrees to use commercially reasonable efforts to construct and  
233 complete the Sites Project, provided that (i) each Storage Partner provides its  
234 share of all required funding; (ii) the Sites Authority is not prohibited by  
235 applicable law from proceeding; and (iii) the Sites Authority and the Reservoir  
236 Management Board have not mutually determined the Sites Project to be  
237 infeasible and impractical.

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

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

247 (d)

248 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

249 2.4. The Sites Authority and Reclamation agree that Reclamation is granted, and  
250 Reclamation shall own a 16% Base Facilities Capacity Interest and 16% Downstream Facilities  
251 Capacity Interest of the Sites Project and an ability to utilize a proportionate share of Sites Water  
252 originating from the Sacramento River as described in this Agreement subject to the following:

253 (a) Reclamation commits to the Sites Authority the \$798 million in federal  
254 funds appropriated prior to the Effective Date towards a portion of the grant and ownership of  
255 the Capacity Interest and subject to Article 8 and Article 10.

256 (b) After the Effective Date, Reclamation shall diligently pursue, within its  
257 authorities, the remaining funds necessary to pay for the Fixed Project Costs commensurate with  
258 the 16% Capacity Interest as further described in Article 4.

259 (c) Reclamation's 16% Capacity Interest shall be subject to Article 9.

260 (d) The Parties agree that Exhibit I describes Reclamation's involvement in  
261 Sites Project governance. No other rights or duties are authorized to Reclamation under this  
262 Agreement unless specified herein.

263

264 **COSTS ASSOCIATED WITH THE SITES PROJECT**

265 3.5. All Sites Project Costs associated with this Agreement shall be in line with  
266 Generally Accepted Accounting Principles and in accordance with 43 Code of Federal  
267 Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the

268 Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency  
269 Act (31 U.S.C. § 1341 et seq.).

270 ~~(i)~~(a) Pursuant to the 2015 Feasibility Memorandum of Understanding, as  
271 amended, and the 2023 Pre-construction Memorandum of Agreement, entered into and agreed  
272 upon by the Parties, Reclamation's costs prior to the Effective Date as set out in Exhibit A are  
273 considered Allowable Costs and will be credited to Reclamation's share of Fixed Project Costs  
274 associated with the Sites Project. Reclamation will provide a final accounting of prior costs  
275 within 60 days after the Effective Date;

276 ~~(a)~~(b) Reclamation's Allowable Costs under Exhibit H, payments under Exhibit  
277 A, payments for Fixed Project Costs not related to Completion, and payments for O&M Costs,  
278 made after the Effective Date, will be credited, reimbursed or otherwise applied to Reclamation's  
279 share of Sites Project Costs in accordance with this Agreement.

280 ~~(b)~~(c) Within 90 days of the Effective Date, Reclamation and the Authority will  
281 develop Exhibit A containing mutually agreeable terms for Reclamation to commit funding  
282 under § 4007 of the WIIN Act and to track Fixed Project Costs related to Completion and  
283 account for funds expended.

284 ~~(e)~~(d) Upon Completion, Reclamation and the Sites Authority will meet and  
285 confer within a reasonable time frame to complete a final accounting of the Sites Project to  
286 determine and mutually agree upon Reclamation's final Capacity Interest allocation as  
287 documented in Exhibit B.

288 ~~(d)~~(e) Fixed Project Costs not related to Completion assigned annually to  
289 Reclamation shall be proportionate to Reclamation's Base Facilities Capacity Interest and  
290 associated Downstream Facilities Capacity Interest.

291 ~~(e)~~(f) O&M Costs: The Sites Authority will be responsible for O&M of the Sites  
292 Project. The Sites Authority will identify the annual O&M Costs attributable to Reclamation.  
293 Reclamation will pay the attributable portion within 30 days of receiving an invoice, subject to  
294 available appropriations.

295 (i) Fixed O&M Costs assigned annually to Reclamation shall  
296 be proportionate to Reclamation's Base Facilities Capacity Interest and Downstream Facilities  
297 Capacity Interest.

298 (ii) Variable O&M Costs assigned annually to Reclamation  
299 shall be calculated based on Reclamation's use of its Base Facilities Capacity Interest and  
300 Downstream Facilities Capacity Interest.

301 ~~(f)~~(g) Use of Reclamation's unused Downstream Facilities Capacity Interest: In  
302 the event a Storage Partner utilizes Reclamation's Downstream Facilities Capacity Interest in the  
303 Dunnigan Pipeline, the Authority will develop and charge the Storage Partner a rate for such use  
304 commensurate with the use, unless otherwise directed by Reclamation. Proceeds received will be  
305 credited toward Reclamation's Sites Project Costs.

306 ~~(g)~~(h) In-kind Services: Reclamation's In-kind Services will count toward  
307 Reclamation's contribution to Sites Project Costs as described in this Agreement. In-kind  
308 Services shall only be credited if the scope, valuation methodology, and allocation basis are in  
309 accordance with Exhibit H.

310 (i) Any interest or fees related to financing activity of the Sites Authority and  
311 their Storage Partners shall not be paid by Reclamation. Other non-allowable costs are described  
312 in Exhibit A.

313 ~~(ii)~~(j) The Sites Project is not part of the Central Valley Project, and as such, will  
314 not receive Project Use Energy.

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

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

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

331 ~~3.6.~~ Reclamation shall have first right of refusal for lease, purchase, and defaulted  
332 interests as described in Exhibit I.

333

**OPERATION OF SITES OWNED FACILITIES**

334

4.7. The Sites Authority will operate and maintain the Sites Owned Facilities in good

335

faith, in accordance with Good Industry Practice and in accordance with all applicable

336

agreements and Article 22 provided that (i) the Storage Partners provide all funding required for

337

operations and maintenance; and (ii) the Sites Authority and the Reservoir Management Board,

338

have not mutually determined the continued operation of the Sites Project is infeasible and

339

impractical. The Sites Authority will protect the Sites Water Right and will manage, control, and

340

protect Sites Water in good faith and in accordance with all applicable laws and regulations.

341

(a) Sites Owned Facilities will be operated in a manner that avoids adverse

342

effects to the Central Valley Project, its water rights, and federal facilities.

343

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

344

in Reclamation's Base Facilities Capacity Interest and Sites Water to be released from

345

Reclamation's Base Facilities Capacity Interest to the Delivery Points. The Sites Authority agrees

346

to take reasonable actions, consistent with applicable law and this Agreement, to achieve

347

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

348

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

349

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

350

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

351

(monetary or otherwise) and the risk of loss between the Delivery Point and Secondary Delivery

352

Point(s).

353

(c) The Sites Authority will operate the Sites Project so as to maximize the

354

water supply and water supply related environmental benefits while continuing to provide flood

355

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

356 the release of water except in cases of flood control operations. The Sites Authority, in good  
357 faith, may temporarily discontinue or reduce the conveyance of Sites Water to, and release of  
358 Sites Water from, the Sites Owned Facilities in various emergency and non-emergency situations  
359 to protect life and property as part of the flood control benefit.

360 (d) Reclamation shall make reasonable and beneficial use of Sites Water  
361 consistent with this Agreement.

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

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

368 (g) Reclamation's share of Sites Water diversions will be proportional to its  
369 Capacity Interest unless a lesser amount is requested by Reclamation.

370 (h) Subject to subarticle (i) below, the Sites Authority or Reclamation may  
371 request Capital Improvements to provide an added benefit to the Sites Project. Such Capital  
372 Improvements shall be subject to approval by the Sites Authority. The Sites Authority will  
373 prepare and distribute a document detailing the anticipated Sites Project Costs and benefits of the  
374 proposed Capital Improvements.

375 (i) Reclamation may not opt out of costs of necessary Capital Improvements  
376 required to maintain initial Sites Project functions and that provide benefits initially  
377 contemplated for the Sites Project. If Reclamation is subject to Capital Improvements  
378 Reclamation's benefits will be commensurate with Reclamation's costs.

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

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

389 (l) The Parties, along with the California Department of Water Resources,  
390 will execute Exhibit G to identify coordination processes for Sites Water diversions and releases.  
391 The Parties, along with the California Department of Water Resources, will consider changes  
392 necessary to represent conditions at the time of Completion and execute an amendment to  
393 Exhibit G as needed.

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

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

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

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

406 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

407 5.8. Reclamation will serve as the ESA Section 7 consultation lead for the initial  
408 construction and water-related operation of Sites Project Facilities. Reclamation and the  
409 Authority will meet and confer on future Sites Project activities to determine the most  
410 appropriate ESA consultation approach and lead agency consistent with applicable law and  
411 regulation.

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

417 (b) It is the understanding of the Parties that future reinitiation of consultation  
418 on the operations of the Central Valley Project after an initial incidental take statement for the  
419 effects from the operations of the Sites Project does not automatically require a reinitiation of  
420 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of  
421 consultation on the Sites Project to jointly review, among other things, the information before  
422 each agency, potential approaches, and possible outcomes. In any consultation that has the

423 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the  
424 Sites Authority, the United States Fish and Wildlife Service (USFWS), and National Marine  
425 Fisheries Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project  
426 while avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is  
427 required, the specific changes contemplated for the Sites Project must meet one of the criteria in  
428 accordance with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties  
429 will cooperate in the preparation and negotiation of the reinitiation of consultation and the  
430 resulting revised incidental take statement specific to the Sites Project.

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

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

441 (e) Reclamation has completed compliance with the National Environmental  
442 Policy Act of 1969, as amended for the construction and operations of the Sites Project. The  
443 Parties agree that any changes to the Sites Project's NEPA compliance will be addressed without  
444 delay throughout the duration of construction.

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**EXCUSED PERFORMANCE**

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

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

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

**FAILURE OF TIMELY PAYMENT**

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

~~(e)~~(a) Fixed Project Costs for Completion.

468 (i) The Parties agree that they will informally meet and confer on  
469 financial needs of the Sites Project three years in advance of expected expenditures to assist  
470 Reclamation with making its budget requests.

471 (i)(ii) Reclamation shall diligently pursue funding—within its  
472 authorities—so as to ensure there are sufficient funds appropriated to cover two (2) Years of  
473 Fixed Project Costs, based on costs anticipated to be incurred during the following two (2) year  
474 period based on Exhibit A. If sufficient funds have not been appropriated to cover such costs,  
475 then Reclamation shall develop a plan to pursue funding for Fixed Project Costs sufficient to  
476 meet its obligations in a timely manner and the Parties shall meet and confer to review such plan.

477 (ii)(iii) The Sites Authority will provide Reclamation with a billing  
478 statement for Reclamation’s share of Fixed Project Costs, based on such costs anticipated to be  
479 incurred during the period starting one year after the date of the billing statement based on  
480 Exhibit A, and documentation of any allocated funds shall be due within 30 days of issuance of  
481 the billing statement.

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

485 (iv)(v) Consistent with Article 24, if Reclamation has not provided  
486 documentation of sufficient allocated funds to the Sites Authority within ninety (90) days of  
487 issuance of the billing statement, the Sites Authority shall make written demand upon  
488 Reclamation. The written demand shall identify the portion of Reclamation’s Capacity Interest  
489 that is at risk of forfeiture, being that portion of Reclamation’s Capacity Interest for which  
490 Reclamation has not yet provided such documentation, based on the then current Exhibit A and

491 in accordance with this Article (“Unpaid Capacity Interest”). If such documentation is not made  
492 available to the Sites Authority within an additional 90 days from the date of such demand,  
493 Reclamation is deemed to have not made timely payment and forfeits the Unpaid Capacity  
494 Interest.

495 ~~(v)~~(vi) Upon a forfeiture of Unpaid Capacity Interest by Reclamation:

496 i. The Sites Authority shall use its best efforts to facilitate a  
497 sale of Reclamation’s applicable Unpaid Capacity Interest.

498 ii. The other non-defaulting Storage Partners holding a  
499 Capacity Interest in the same Sites Project Facilities (the Base Facilities and/or the Downstream  
500 Facilities, as applicable) shall have a right of first refusal to assume all or a portion of  
501 Reclamation's Unpaid Capacity Interest and related financial obligations under this Agreement,  
502 at a price mutually agreed between the Sites Authority and the Storage Partner purchasing all or  
503 a portion of Reclamation’s Unpaid Capacity Interest.

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

511 ~~b-iv.~~ In the event that the Sites Authority is unable to enter into  
512 an agreement with entities for the purchase of all or a portion of Reclamation's Unpaid Capacity

513 Interest and the assumption of the related obligations under this Agreement, the Unpaid Capacity

514 Interest shall be apportioned pro rata to Participants.

515 ~~i.~~ Notwithstanding that all or any portion of Reclamation's  
516 Unpaid Capacity Interests is so sold, Reclamation shall remain liable to the Sites Authority for  
517 any costs incurred prior to said sale to pay the full amount of its share of costs under this  
518 Agreement as if such sale has not been made, except that such liability shall be discharged to the  
519 extent that the Sites Authority buyer undertakes that liability. shall receive payment from the  
520 buyer thereof for that share of costs. In the event of such sale, Reclamation shall not remain  
521 liable for the future Sites Project Costs associated with such sold Capacity Interest.

522 ~~ii.v.~~ ii.v.

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

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

533 (i) Reclamation shall diligently pursue funding—within its  
534 authorities—so as to ensure there are sufficient funds appropriated to cover one (1) Year of  
535 Fixed Project Costs and Fixed O&M Costs, based on costs anticipated to be incurred starting two

536 (2) Years after the date of the billing statement. If sufficient funds have not been appropriated to  
537 cover such costs, then Reclamation shall develop a plan to pursue funding for Fixed Project  
538 Costs and Fixed O&M Costs sufficient to meet its obligations in a timely manner and the Parties  
539 shall meet and confer to review such plan.

540 (ii) The Sites Authority will provide Reclamation a billing statement  
541 for Reclamation's share of Fixed Project Costs and Fixed O&M Costs, based on such costs  
542 anticipated to be incurred during the one (1) Year period starting one (1) Years after the date of  
543 the billing statement, and documentation of any allocated funds shall be due within 30 days of  
544 issuance of the billing statement.

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

548 (iv) Consistent with Article 24, if Reclamation has not provided  
549 documentation of sufficient allocated funds to the Sites Authority within 90 days of issuance of  
550 the billing statement, the Sites Authority shall make written demand upon Reclamation. The  
551 written demand shall identify the payment shortfall (Delinquent Payment Amount). If such  
552 documentation is not made available to the Sites Authority within 90 days from the date of such  
553 demand, Reclamation is deemed to have not made timely payment and is delinquent.

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

556 i. The Sites Authority shall use its best efforts to  
557 facilitate a sale(s) of any or all Sites Water from Reclamation's Capacity Interest to cover the  
558 Delinquent Payment Amount, including the reimbursement of the Sites Authority for all

559 reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been paid,  
560 incurred or sustained by the Sites Authority in connection with the sale of Sites Water to cover  
561 Reclamation's Delinquent Payment Amount;

562 ii. Reclamation shall have no right to utilize Sites  
563 Water in its Capacity Interest, no right to otherwise utilize its Capacity Interest, and agrees to  
564 allow other Storage Partners to utilize its Capacity Interest until its account is no longer  
565 delinquent; and

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

568 ~~(e)(c)~~ Variable O&M Costs.

569 (i) The Sites Authority will provide Reclamation with an estimated  
570 billing statement for Reclamation's share of Variable O&M Costs based on such costs  
571 anticipated to be incurred during the six (6) month period starting one (1) Year after the date of  
572 the billing statement.

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

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

581 a. Consistent with Article 24, if Reclamation has not made  
582 sufficient funding available to the Sites Authority within 30 days of issuance of the billing  
583 statement, the Sites Authority shall make written demand upon Reclamation. The written  
584 demand shall identify the payment shortfall (“Delinquent Amount”). If sufficient funding is not  
585 made available to the Sites Authority within 30 days from the date of such demand, Reclamation  
586 is deemed to have not made timely payment and is in delinquency.

587 b. Upon a Variable O&M Costs delinquency of Reclamation:

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

594 ii. Reclamation shall have no right to utilize Sites  
595 Water in its Capacity Interest, no right to otherwise utilize its Capacity Interest, and agrees to  
596 allow other Storage Partners to utilize its Capacity Interest until its account is no longer  
597 delinquent; and

598 iii. Reclamation’s right of first refusal in Article 5 is  
599 suspended until its account is no longer delinquent.

600 ~~(f)~~(d) Reclamation’s Fixed O&M Costs and Variable O&M Costs shall be  
601 determined in accordance with Exhibit C.

602 ~~(g)~~(e) Remedies: In addition to the other remedies set forth in Article 10, upon  
603 the occurrence of an event of delinquent payment in accordance with this Agreement, any Party

604 shall be entitled to proceed to protect and enforce the rights in a court of competent jurisdiction,  
605 consistent with Federal law and without waiving the United States' sovereign immunity from  
606 suit.

607 **WIND-UP**

608 7.11. If the Sites Authority and the Reservoir Management Board determine, - that the  
609 Sites Project will be terminated before Completion because of infeasibility, impracticality,  
610 inability, failure of the Participants to fund the Sites Project, or failure of the Sites Authority to  
611 construct the Sites Project, the Sites Authority shall adopt a resolution to wind-up the Sites  
612 Project (a “**Wind-Up Resolution**”).

613 (a) Upon adoption of a Wind-Up Resolution by the Sites Authority, ~~the~~  
614 ~~Authority~~ Storage Partners shall have a pro-rata right of first refusal to the Project Assets  
615 (excluding the Partner Facilities and Federal Facilities) based on their paid Fixed Project Costs  
616 first offer to sell the Project Assets to the Storage Partners (excluding the Partner Facilities), at a  
617 fair market value as determined by a majority of a panel of ~~3~~ three (3) licensed appraisers,  
618 including

619 (i) ~~(i) a~~ Any partially constructed or completed physical works or  
620 assets that divert Sites Water into or release Sites Water from the Sites Owned Facilities and

621 (ii) ~~(ii) a~~ Any other non-physical rights, interests, or obligations related  
622 to the Sites Project.

623 ~~(a)(b)~~ If any Storage Partners ~~accept such offer for any or all of the~~  
624 ~~offered~~ proceed with purchase of Project Assets ~~interests~~, then the Sites Authority and such

625 purchasing Storage Partners shall work in good faith to close upon the sale of such interests  
626 within 180 days after the appraiser panel’s determination of fair market value.

627 ~~(b)(c)~~ Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites  
628 Authority shall appoint a winding-up agent (the “**Winding-Up Agent**”). The Winding-Up Agent  
629 shall, upon expiration of the time for the Storage Partners to accept the offer described in  
630 sub~~article~~~~section~~ ~~(b)~~(ba), prepare a plan for disposition of the Project Assets, which shall include  
631 plans for mitigating or remediating any hazardous or unsafe conditions ~~located on the Sites~~  
632 ~~Project site~~ that are a direct result of the construction of the Sites Project, ~~and upon~~ Upon  
633 approval of the Sites Authority, the Winding-Up Agent shall implement the disposition of the  
634 Project Assets in accordance with the plan for disposition, including the disposition of  
635 unexpended ~~and unobligated~~ funds ~~of~~ held by the Sites Authority ~~and to~~ the Storage Partners.  
636 Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable  
637 manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents  
638 then held by the Sites Authority shall first be used, based on the Capacity Interest pro-rata share  
639 of paid Sites Project Costs, to pay the following amounts in the following order of priority (i)  
640 repay debts of the Sites Authority incurred for funding the Sites Project; provided, however, that  
641 any monies ~~se~~ contributed by a self-funding Participant Storage Partner and held at the time of a  
642 winding-up shall not be used to repay debts of the Sites Authority incurred for funding-financing  
643 the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe conditions  
644 associated with ~~located on~~ the Sites Project ~~site~~ pursuant to the plan for disposition of the  
645 Project Assets, and (iii) distribute cash to the Participants Storage Partners ~~that had~~ having  
646 satisfied their capital funding obligations share of Sites Project Costs; provided that any  
647 unexpended funds which the Sites Authority received from Reclamation will be returned to

648 Reclamation. Any remaining funds shall then be distributed to the Storage Partners based on  
649 their proportional respective Capacity Interests paid Sites Project Costs. In the event Reclamation  
650 has advanced funding above the Capacity Interest specified in this Agreement, Reclamation will  
651 be reimbursed at that equivalent pro-rata share. Subject to the Sites Authority's Records  
652 Management Policy, Storage Partners shall be entitled to copies of any work products developed  
653 by the Sites Authority or its consultants on behalf of the Storage Partners, and the Sites Authority  
654 shall convey to the Storage Partners, as tenants in common with all other Storage Partners who  
655 are not in default under the Benefits and Obligations Contract, a pro rata interest based on the  
656 Capacity Interests paid Fixed Project Costs in all real and personal property remaining after  
657 implementation of the plan for disposition of the Project Assets in accordance with this Section.

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

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

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

## 668 **DISPUTE RESOLUTION**

669 5.12. Should any dispute arise concerning any provision(s) of this Agreement, or the  
670 Parties' rights and obligations thereunder, the United States and the Sites Authority shall meet

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

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

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

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**OPINIONS AND DETERMINATIONS**

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

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

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

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

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

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

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

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

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

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regulation.

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

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

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this Agreement, the laws of the United States, and the rules and regulations promulgated by the

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Secretary. Such determinations shall be made in consultation with the Sites Authority to the

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extent reasonably practicable.

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

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

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

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herein, for the use of the Sites Project Facilities.

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**WATER MEASUREMENT**

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7.14. The Sites Authority is responsible for the measurement and recording of all Sites

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

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

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

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measuring devices as shown in Exhibit B are installed and operating properly. The Sites

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Authority will be responsible for installing, operating, maintaining, and repairing all such

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measurement devices. The equipment and methods used to make such measurement and

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recordings shall be in accordance with Good Industry Practices. Upon request of either party to

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this Agreement, the Sites Authority shall investigate, or cause to be investigated, the accuracy of

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such and shall take any necessary steps to adjust any errors appearing therein. For any period of

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time when accurate measurements have not been made, the Sites Authority shall consult with

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Reclamation prior to making a final determination of the quantity delivered for that period of

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time.

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~~(+)~~(b) After ~~delivery~~the Delivery Point, Reclamation shall ensure that Sites

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Water delivered under this Agreement is measured and supports the Sites Authority's applicable

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reporting on Sites Water and Sites Water Right. The water measuring devices or water

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measuring methods of comparable effectiveness must be acceptable to the Sites Authority.

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Reclamation shall be responsible for installing, operating, maintaining, and repairing all such

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measuring devices and implementing all such water measuring methods at no cost to the Sites

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Authority. On or before the 20th calendar day of each month, Reclamation shall provide the Sites

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Authority with the written quantity of water taken during the preceding month under this

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Agreement.

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**SEVERABILITY**

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

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**HOLD HARMLESS**

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9.16. (a) The Sites Authority shall indemnify, defend, and hold harmless the United States, its officers, agents, and employees from and against any and all claims, damages, losses, liabilities, and expenses arising out of or resulting from the United States' work under this Agreement that constitutes Allowable Costs, ~~or the design, operation, or maintenance of the Sites Project,~~ provided the claims, damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or omissions on the part of the United States. The Sites Authority will not assert that Reclamation, its Regional Director, officers, agents, ~~or~~ employees or assigns, are liable for damages of any nature whatsoever arising out of any actions or omissions by the Sites Authority, its directors, officers, agents, ~~or~~ employees or assigns, related to the Sites Authority's performance of this Agreement, where such liability is caused by an act, error or omission of the Sites Authority, its director, officers, agents, ~~or~~ employees or assigns.

(b) The Parties agree that the Sites Authority, Reclamation shall defend, and hold harmless the Sites Authority, its officers, agents, and employees will not be liable for any

757 ~~from and against any and all claims, damages, losses, liabilities, and expenses arising out of or~~  
758 ~~resulting from the Unites States' control, carriage, handling, use, disposal, or distribution of Sites~~  
759 ~~Water beyond the Delivery Point, [up to \$XXXXXXXX amount], except for any damage or~~  
760 ~~claims arising in connection with (i) acts or omissions of the Sites Authority or any of its~~  
761 ~~directors, officers, employees, agents, and assigns with the intent of creating the situation~~  
762 ~~resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its~~  
763 ~~directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or~~  
764 ~~directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a~~  
765 ~~malfunction of a Sites Project Facility.~~

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

## 770 NOTICES

771 ~~10.17.~~ Any notice, demand, or request authorized or required by this Agreement shall be  
772 deemed to have been given, on behalf of the Sites Authority, when mailed, postage prepaid, or  
773 delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800  
774 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage  
775 prepaid, or delivered to the Sites Authority, 122 Old Highway 99 West, Maxwell, CA 95955.

## 776 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

777 ~~11.18.~~ The expenditure or advance of any money or the performance of any obligation of  
778 the United States under this Agreement shall be contingent upon appropriation or allotment of  
779 funds. Absence of appropriation or allotment of funds shall not relieve the Sites Authority from  
780 any obligations under this Agreement. No liability shall accrue to the United States in case funds  
781 are not appropriated or allotted.

782

**OFFICIALS NOT TO BENEFIT**

783 ~~12.19.~~ No Member of or Delegate to the Congress, Resident Commissioner, or official of  
784 the Sites Authority shall benefit from this Agreement other than as a water user or landowner in  
785 the same manner as other water users or landowners.

786

**ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

787 ~~13.20.~~ (a) The provisions of this Agreement shall apply to and bind the successors  
788 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or  
789 interest therein by either Party shall be valid until approved in writing by the other Party.

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

791 of the Sites Authority’s rights and obligations under this Agreement to a third party.

792

**BOOKS, RECORDS, AND REPORTS**

793 ~~14.21.~~ The Sites Authority shall establish and maintain accounts and other books and  
794 records pertaining to administration of the terms and conditions of this Agreement, including the  
795 Sites Authority’s financial transactions; water supply data; ~~project-Sites Project~~ operation,  
796 maintenance, and replacement logs; ~~project-Sites Project~~ land and rights-of-way use agreements;  
797 the water users’ land-use (crop census), land-ownership, land-leasing, and water-use data; and  
798 other matters that the Contracting Officer may require. Reports shall be furnished to the  
799 Contracting Officer in such form and on such date or dates as the Contracting Officer may  
800 require. Subject to applicable Federal laws and regulations, each Party to this Agreement shall  
801 have the right during office hours to examine and make copies of the other Party’s books and  
802 records relating to matters covered by this Agreement.

803

**COMPLIANCE WITH LAWS**

804 ~~15.22.~~ (a) The Parties agree that the use of Federal Facilities pursuant to this  
805 Agreement is subject to Federal Reclamation law and the rules and regulations promulgated by  
806 the Secretary of the Interior under Federal Reclamation law.

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

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

818 **COMPLIANCE WITH CIVIL RIGHTS**

819 ~~16.23.~~ (a) The Sites Authority shall comply with Title VI of the Civil Rights Act of  
820 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title  
821 V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
822 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub.  
823 L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
824 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
825 Interior and/or Bureau of Reclamation.

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

833 (c) The Sites Authority makes this Agreement in consideration of and for the  
834 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
835 Federal financial assistance extended after the date hereof to the Sites Authority by the Bureau of  
836 Reclamation, including installment payments after such date on account of arrangements for  
837 Federal financial assistance which were approved before such date. The Sites Authority  
838 recognizes and agrees that such Federal assistance will be extended in reliance on the  
839 representations and agreements made in this article and that the United States reserves the right  
840 to seek judicial enforcement thereof.

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

843

**REPORTING REQUIREMENTS**

844

8.24. The Sites Authority shall provide Reclamation with progress and financial status

845

reports to support disbursements under Exhibit A and reporting requirements under Federal

846

Reclamation law. If the reporting requirements of the funding mechanism utilized to disburse

847

funds to the Sites Authority does not conflict with (a) and (b) below, the Sites Authority will

848

submit reports to Reclamation pursuant to this Article.

849

(a) Progress Reports: As of the Effective Date through Completion, the Sites

850

Authority shall provide semi-annual progress reports. Progress reports must contain a narrative

851

of the work accomplished, descriptions of the contracts, major subcontracts, and modifications

852

implemented during the reporting period, architect, and engineer (A/E) service deliverables, the

853

percentage of work completed, the Completion status, and any problems encountered, and

854

corrective actions taken. Any issues that impact or may pose a future risk to cost, scope, or

855

schedule will be identified. The report will include an updated schedule.

856

(b) Financial Reports: As of the Effective Date through Completion, the Sites

857

Authority shall provide semi-annual financial reports using Standard Form-425 (Federal

858

Financial Report).

859

**FUNDS TO BE PROVIDED**

860

17.25. In accordance with the Prompt Payment Act, Reclamation shall transmit payment

861

to the Sites Authority in accordance with Exhibit A, Article 9 and Article 10 and subject to

862

Article 16 ~~of this Agreement. Any applicable interest penalties shall be paid by Reclamation and~~

863

~~shall not be credited towards Reclamation's share of Project Costs.~~

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

869 (b) Upon ~~execution of this Agreement~~ the Effective Date, any additional funds  
870 not required by ~~the Spend Plan~~ Exhibit A may be transmitted to the Sites Authority, provided that  
871 any such advance of funds shall be released in as many installments as ~~Reclamation~~ the  
872 ~~Contracting Officer~~ deems necessary. The Sites Authority may request an advance of funds in  
873 addition to funds— required by ~~Exhibit A~~ the Spend Plan; provided that, the Sites Authority must  
874 provide ~~Reclamation~~ the Contracting Officer written justification for the immediate need for the  
875 funds requested, including how the funds would be applied, and ~~Reclamation~~ the Contracting  
876 Officer shall have the final determination of how and when installments are transmitted.

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

884 (e) The Sites Authority will provide Reclamation with an invoice for  
885 Reclamation's share of Fixed Project Costs, based on such costs anticipated to be incurred during

886 the following quarter based on Exhibit A ~~the Spend Plan~~, and payment shall be due within 30  
887 days of issuance of the invoice.

888 (d) \_\_\_\_\_

889 ~~(d) — If delayed payment or payment procedures imposed by Reclamation under  
890 this Agreement require the Sites Authority or Participants to incur additional costs, such as any  
891 resulting interest expense, financing charges, or related fees, additional costs so incurred shall be  
892 reimbursed in full by Reclamation. Such costs shall not be credited toward Reclamation's share  
893 of Sites Project Costs.~~

894 **MEDIUM FOR TRANSMITTING PAYMENTS**

895 ~~18.26.~~ (a) All payments from the Sites Authority to the United States under this  
896 Agreement shall be by the medium requested by the United States on or before the date payment  
897 is due. The required method of payment may include checks, wire transfers, or other types of  
898 payment specified by the United States.

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

903  
904 **AGREEMENT DRAFTING CONSIDERATIONS**

905 ~~19.27.~~ This Agreement has been negotiated and reviewed by the pParties hereto, each of  
906 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced  
907 Articles of this Agreement have been drafted, negotiated, and reviewed by the Pparties, and no  
908 one Pparty shall be considered to have drafted the stated articles. Single-spaced articles are  
909 standard articles pursuant to Reclamation policy.

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

912 (SEAL) THE UNITED STATES OF AMERICA

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

917 SITES AUTHORITY

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

920 Attest:

921 \_\_\_\_\_