

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

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

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

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

33 [5th] WHEREAS, § 4007(e) of the WIIN Act provides, “subject to compliance with
34 State water rights laws, the right to use the capacity of a State-led storage project for which the

35 Secretary of the Interior has entered into an agreement under this subsection shall be allocated in
36 such manner as may be mutually agreed to by the Secretary of the Interior and each other party
37 to the agreement.”; and

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

41 [7th] WHEREAS, on November 2, 2023, the Sites Authority and Reclamation released
42 a joint Final Environmental Impact Report/Final Environmental Impact Statement, hereinafter
43 “FEIR/FEIS”²², for the Project; and the Sites Authority certified the FEIR/FEIS and adopted the
44 Project with Board Resolution 2023-02; and on January 23, 2026 Reclamation signed its Record
45 of Decision for the construction and operation of the Sites Project; and

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

54 [9th] WHEREAS, the Sites Authority intends to enter into and comply with contracts
55 Partner Agreements with agencies to convey water related to and from the Sites Project.

56 [~~10th~~]—~~WHEREAS, the Sites Authority entered into the Colusa County / Sites Authority~~
57 ~~Memorandum of Understanding and intends for Sites Water originating from Funks Creek and~~

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

60

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

62 **DEFINITIONS**

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

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

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

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

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, subject to the Sites Water Right, applicable law and
78 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 Project-Owned Facilities or
98 other facilities that are utilized by select Storage Partners listed as Downstream Facilities in
99 Exhibit B.

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, subject to the Sites Water Right, applicable law and
104 governmental approvals.

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

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

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

123 (o) “Force Majeure” shall mean events beyond the reasonable control of a
124 Party, including strikes, riots, wars, fire, earthquakes, acts of God and/or unusual acts of nature,

125 acts in compliance with any law, regulation or order (whether valid or invalid) by the United
126 States of America or any state thereof or any other domestic or foreign governmental body or
127 instrument thereof having jurisdiction in the matter, in each case which directly, materially and
128 adversely affects a Party's ability to perform its obligations under this Agreement.

129 (p) "Generally Accepted Accounting Principles" shall mean such accepted
130 accounting practices as conforms established at the time to generally accepted accounting
131 principles for use at public agencies in the United States of America, consistently applied.

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

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

142 (s) "In-kind Services" shall mean eligible time and effort, real and personal
143 property, and goods and services that may be applied to cost-share, as defined, evaluated and
144 documented in Article 5 and Exhibit H. In-kind Services may be applied to the cost share, but
145 the value of the in-kind contributions must be evaluated and documented as described in Article
146 4. Valuation of In-kind 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 ~~or either of them as the context requires.~~

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

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

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

155 ~~(w)~~(v) “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~~
157 ~~to for the -diversion~~, release and conveyance of Sites Water to or from the Sites Project, as listed
158 in Exhibit B.

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

163 (x) “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 (y) “Refuge Water Points of Acceptance” shall mean locations at which the
170 Sites Authority will make water supplies available to Reclamation for delivery to refuges as
171 outlined in Exhibit D to this Agreement.

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

174 ~~(y)(aa)~~

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

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

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

189 (ee) “Sites Owned Facilities” shall mean the physical infrastructure and capital
190 improvements for the Sites Project owned by the Sites Authority, including dams, reservoir(s),
191 pipelines, pump stations, and other facilities necessary or appropriate for providing water supply

192 and storage ~~including the facilities~~ listed as Sites Owned Facilities in Exhibit B, excluding
193 ~~Partner Facilities, Federal Facilities and~~ the real property required for the Sites Project.

194 “Sites Project Costs” shall mean the sum of Fixed O&M Costs, Fixed
195 Project Costs and Variable O&M Costs payable by or credited to Reclamation under this
196 Agreement, or each of them, as the context requires.

197 ~~(z)(ff)~~

198 ~~(aa)(gg)~~ “Sites Project Facilities” shall mean collectively the Sites Owned
199 Facilities, Federal Facilities and Partner Facilities, or any of them as the context requires.

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

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

207 ~~(dd)(hh)~~ “Sites Project” shall mean the ~~-Sites Project Facilities~~ coordinated
208 by the managed, owned and operated by the Sites Authority to operate and manage the Sites
209 Owned Facilities for the benefit of water supply, as Sites Project Facilities are outlined in
210 Exhibit B ~~to this Agreement.~~

211 ~~(ee)(ii)~~ “Sites Reservoir” shall mean the 1.5 million acre-feet off-stream storage
212 reservoir near Maxwell, California.

213 ~~(ff)(jj)~~ “Sites Water” shall mean the water that is appropriated under the Sites
214 Water Right.

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

217 ~~(hh)~~(ll) “Storage Partner” shall mean the governmental agencies, water
218 organizations, and others who have funded and received Capacity Interest and the associated
219 Sites Water, as listed in Exhibit B.

220 ~~(ii)~~ —“Spend Plan” means the Spend Plan in Exhibit A, as prepared and
221 amended in accordance with this Agreement.

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

224 ~~(kk)~~(nn) “Variable O&M Costs” shall mean the operation and maintenance
225 costs incurred by the Sites Authority in connection with the Sites Project in an amount that is
226 dependent upon and varies with the amount of Sites Water diverted, stored or released from the
227 Sites Project Facilities to the Storage Partners, including but not limited to the cost of power
228 (including pumping), replacement and other costs, funding of reserves in accordance with the
229 Sites Authority policies and Generally Accepted Accounting Principles, and wheeling and other
230 conveyance costs for the use of Federal Facilities, Partner Facilities, and other facilities that are
231 not Sites Owned Facilities.

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

234

TERM OF AGREEMENT

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

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

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

246 **(b)** _____
247 _____ This Agreement may be modified or amended upon written mutual
248 agreement of the Parties. The Parties agree that any exhibit attached to this Agreement,
249 excluding Exhibit A, may be amended, updated, or replaced ~~from time to time~~ without requiring
250 a formal amendment to this Agreement, provided that: (1) such amendment, update, or
251 replacement is documented in writing and signed by authorized representatives of the Parties; (2)
252 the written amendment expressly references this Agreement and the specific exhibit being
253 amended; (3) upon execution by the Parties, the amended exhibit shall automatically replace the
254 prior version and be deemed incorporated into this Agreement as of the effective date stated in
255 the amended exhibit; and (4) the amended exhibit shall not modify or affect any other terms or
256 conditions of this Agreement. Updates related to Exhibit A will be addressed in Exhibit A.

257 (c)

258 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

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

264 (a) Reclamation commits to the Sites Authority the \$798 million in federal
265 funds appropriated prior to the Effective Date ~~of this Agreement~~ towards ~~a portion of~~ the grant
266 and ownership of the [~~Base Facilities Capacity Interest and subject to Article 8 and Article 10~~
267 ~~and Downstream Facilities Capacity Share Interest~~].

268 (b) After the Effective Date ~~of this Agreement~~, Reclamation shall diligently
269 pursue, within its authorities, the remaining funds necessary to pay for the Actual
270 Costs Sites Fixed Project Costs commensurate with the attributable to 16% of [~~Base Facilities~~
271 ~~Capacity Interest and 16% of Downstream Facilities Capacity Share Interest~~] Capacity Interest as
272 further described in Article 9.4 ~~of the Agreement~~.

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

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

COSTS ASSOCIATED WITH THE SITES PROJECT

279
280 4. All Sites Project eosts-Costs associated with this Agreement shall be ~~compliant~~
281 ~~with Federal law and~~ in line with Generally Accepted Accounting Principles and ~~;~~ In accordance
282 with 43 Code of Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act
283 of 1902, and the Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the
284 Anti-Deficiency Act (31 U.S.C. § 1341 et seq.). ~~Reclamation costs incurred~~ After the Effective
285 Date, only Reclamation's Allowable Costs of this Agreement shall ~~only~~ be credited, reimbursed
286 or otherwise applied toward Reclamation's ~~participation~~ Sites Project Costs in the Sites Project if
287 ~~they constitute Allowable Costs.~~

288 ~~Upon the determination of Completion of construction of the Sites Project,~~
289 ~~Reclamation and the Sites Authority will meet and confer within a reasonable time frame to~~
290 ~~complete a final accounting of the Sites Project to determine and mutually agree upon~~
291 ~~Reclamation's final Capacity Interest and Share allocation to Reclamation. The final Capacity~~
292 ~~Interest and Share attributable to Reclamation's final investment as will be documented in~~
293 ~~Exhibit BE to this Agreement.~~

294 (a) ~~— P~~

295 (b) ~~— The Parties agree:~~

296 (c) ~~— Pursuant to the 2015 Feasibility Memorandum of Understanding, as~~
297 amended, and the 2023 Pre-construction Memorandum of Agreement, entered into and agreed
298 upon by the Parties, Reclamation's costs prior to the Effective Date ~~of this Agreement~~ as set out
299 in Exhibit A the Spend Plan are considered Allowable Costs and will be credited to
300 Reclamation's share of Fixed Project eCosts associated with the Sites Project ~~in accordance with~~

301 ~~this Article 4.~~ Reclamation will provide a final accounting of prior costs within 60 days after the
302 Effective Date;

303 (a) _____

304 ~~(d)~~ — Reclamation’s Allowable Costs after the Effective Date ~~of this Agreement~~
305 as set out in ~~the Spend Plan~~ Exhibit A and Exhibit H will be credited, reimbursed or otherwise
306 applied to Reclamation’s share of Sites Project Costs in accordance with this Agreement.

307 (b) _____

308 (c) _____ Exhibit A shall contain mutually agreeable terms for Reclamation to
309 commit funding under § 4007 of the WIIN Act and to track Fixed Project Costs and account for
310 funds expended.

311 (d) _____ Upon Completion, Reclamation and the Sites Authority will meet and
312 confer within a reasonable time frame to complete a final accounting of the Sites Project to
313 determine and mutually agree upon Reclamation’s final Capacity Interest allocation as
314 documented in Exhibit B.

315 _____

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

318 ~~(+)~~(e) O&M Costs: The Sites Authority will be responsible for O&M of the Sites
319 Project. The Sites Authority will identify the annual O&M Costs attributable to Reclamation.

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

322 (i) Fixed O&M Costs assigned annually to Reclamation shall
323 be proportionate to Reclamation's Base Facilities Capacity Interest ~~and Share~~ and associated
324 Downstream Facilities Capacity Interest.

325 (ii) Variable O&M Costs assigned annually to Reclamation
326 shall be ~~calculated based on proportionate to~~ Reclamation's use of its Base Facilities Capacity
327 Interest ~~and Share and~~ associated Downstream Facilities Capacity Interest.

328 ~~(2)(f)~~ Use of Reclamation's unused Downstream Facilities Capacity
329 ~~Share~~Interest: In the event a Storage Partner utilizes Reclamation's Downstream Facilities
330 Capacity ~~Share~~Interest in the Dunnigan Pipeline, the Authority will develop and charge the
331 Storage Partner a rate for such use commensurate with the use, unless otherwise directed by
332 Reclamation. Proceeds received will be credited toward Reclamation's ~~fixed and variable~~
333 ~~O&M Sites Project~~ Costs.

334 ~~(e)~~ In-kind Services: Reclamation's In-kind Services will count toward
335 Reclamation's contribution to ~~Sites~~Sites Project Costs as described in this Agreement. In-kind
336 ~~S~~services shall only be credited if the scope, valuation methodology, and allocation basis are in
337 accordance with Exhibit H.

338 ~~(g)~~ _____

339 ~~(f)~~ Non-allowable Costs include, but are not limited to:

340 Any interest or fees related to financing activity of the Sites Authority and their Storage
341 Partners shall not be paid by Reclamation. Other non-allowable costs are described in
342 Exhibit H.

343 ~~(i)(h)~~ _____

344 ~~(ii)(i)~~ The Sites Project is not part of the Central Valley Project, and as such, will
345 not receive Project Use Energy.

346 ~~(iii)(i)~~ Other non-allowable costs are described in Exhibit H.

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

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

357 ~~(k)~~ To the extent power, energy, or other revenue sources are generated by the
358 Sites Project Facilities, sales of such power, energy and all other revenue sources will be
359 managed by the Sites Authority. Any revenue received by the Sites Authority that is attributable
360 to Reclamation's Capacity Interest ~~and Share~~ or the use of Reclamation's Capacity Interest ~~and~~
361 ~~Share~~ for the sale or other disposition of power, energy or other revenue sources shall be used to
362 offset Reclamation's Variable O&M Costs, and to the extent that such revenues exceed
363 Reclamation's Variable O&M Costs in a Year, any remaining revenues will be used to offset
364 Reclamation's Fixed O&M Costs. The Parties acknowledge and agree that the release of Sites
365 Water has a higher priority than the generation of power by Sites Project Facilities and power
366 generation is not guaranteed to Reclamation with the release of Sites Water.

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

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

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

375 6. The Sites Authority will operate and maintain the Sites Project Owned Facilities
376 in good faith, in accordance with Good Industry Practice and in accordance with all applicable
377 agreements and Article 21.0. The Sites Authority will protect the Sites Water Right and will
378 manage, control, and protect Sites Water in good faith and in accordance with all applicable laws
379 and regulations.

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

382 (b) Reclamation agrees to timely provide requests for Sites Water to be stored
383 in Reclamation's ~~Storage~~-Capacity Interest and Share and Sites Water to be released from
384 Reclamation's ~~Storage~~-Capacity Interest and Share to the Delivery Points. The Sites Authority
385 agrees to take reasonable actions, consistent with applicable law and this Agreement, to achieve
386 Reclamation's storage and release requests to the Delivery Points. Reclamation may specify a
387 Secondary Delivery Point(s) in its release request subject to the reasonable approval by the Sites
388 Authority. The Sites Authority will take actions reasonably practicable to assist Reclamation in

389 conveying their Sites Water to the Secondary Delivery Point(s). Reclamation shall bear all costs
390 (monetary or otherwise); and the risk of loss in conveying the Sites Water between the Delivery
391 Point and Secondary Delivery Point(s).

392 (c) The Sites Authority will operate the Sites Project so as to maximize the
393 water supply and water supply related environmental benefits while continuing to provide ~~the~~
394 flood control and recreational benefits. The diversion of Sites Water to storage will take priority
395 over the release of water except in cases of severe flooding. The Sites Authority, in good faith,
396 may temporarily discontinue or reduce the conveyance of Sites Water to, and release of Sites
397 Water from, the ~~Sites-Project Owned~~ Facilities in various emergency and non-emergency
398 situations to protect life and property as part of the flood control benefit.

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

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

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

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

409 (g)(h) Subject to Section (if) ~~above~~below, the Sites Authority or Reclamation
410 may request Capital Improvements ~~to the Sites Project Facilities~~ to provide an added benefit to
411 the Sites Project. Such Capital Improvements shall be subject to approval by the Sites Authority.

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

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

419 ~~(h)(i)~~ (i) In the event that proposed Capital Improvements are not approved by the
420 Sites Authority, Storage Partners may elect to continue with the Capital Improvements. Those
421 Sites Project ~~C~~costs and benefits associated with such Capital Improvements shall be allocated
422 only to the subset of Storage Partners electing to proceed with the Capital Improvements in
423 accordance with an agreement among the Sites Authority and such Storage Partners.

424 ~~(h)(k)~~ (k) The Sites Authority will deliver Sites Water to the Refuge Water Points of
425 Acceptance, as described in Exhibit D, to meet the Sites Project's IL4 Water obligations pursuant
426 to the State of California's investment, without any cost to Reclamation. Reclamation will
427 deliver Sites Water from the Refuge Water Points of Acceptance to the Refuge Water Points of
428 Delivery.

429 ~~(h)(l)~~ (l) The Parties, along with the California Department of Water Resources,
430 will execute Exhibit G to identify coordination processes for Sites Water diversions and releases.
431 The Parties, along with the California Department of Water Resources, will consider changes
432 necessary to represent conditions at the time of Completion and execute an amendment to
433 Exhibit G as needed.

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

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

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

441 ~~(v)~~(p) The Sites Authority and Reclamation each agree that Reclamation shall be
442 allowed, at reasonable times and upon reasonable prior notice, and at Reclamation's expense, to
443 enter onto Sites Project-Owned Facilities for reasonable purposes in accordance with the Sites
444 Authority's reasonable safety regulations and policies and subject to applicable law and
445 governmental approvals.

446 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

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

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

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

457 (b) It is the understanding of the Parties that future reinitiation of consultation
458 on the operations of the Central Valley Project after an initial incidental take statement for the
459 effects from the operations of the Sites Project does not automatically require a reinitiation of
460 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of
461 consultation on the Sites Project to jointly review, among other things, the information before
462 each agency, potential approaches, and possible outcomes. In any consultation that has the
463 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the
464 Sites Authority, the United States Fish and Wildlife Service (USFWS), and National Marine
465 Fisheries Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project
466 while avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is
467 required, the specific changes contemplated for the Sites Project must meet one of the criteria in
468 accordance with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties
469 will cooperate in the preparation and negotiation of the reinitiation of consultation and the
470 resulting revised incidental take statement specific to the Sites Project.

471 (c) The Sites Authority is responsible for environmental compliance inwith
472 regard to other applicable federal, state and local laws for the construction, ~~and~~ operations, and
473 maintenance of the Sites Project. The Sites Authority will document its compliance with these
474 requirements, as appropriate, and agrees to provide such documentation to Reclamation upon
475 request.

476 (d) Through the development, execution, and implementation of a
477 Programmatic Agreement to address adverse effects to historic properties, Reclamation will

478 remain in compliance with Section 106 of the National Historic Preservation Act of 1966, as
479 amended, for the construction of the Sites Project. The Parties agree to meet and confer as
480 necessary to ensure the Sites Project's Section 106 construction compliance is timely
481 implemented throughout the duration of construction.

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

487 EXCUSED PERFORMANCE

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

491 (a) Upon the occurrence of an event of Force Majeure, the Sites Authority
492 shall be excused from its obligations under this Agreement for the period during which it is
493 unable to comply with such obligations as a result of such event of Force Majeure; and

494 Reclamation shall be excused from its obligations under this Agreement for the period during
495 which it is unable to comply with such obligations as a result of the event of Force Majeure,

496 other than the payment of Sites Project ~~costs~~ Costs described in this Agreement, which
497 obligations are not subject to reduction or abatement, unless the event of Force Majeure

498 specifically limits Reclamation's ability to pay, in which case the Parties will meet and confer
499 to reach a mutually acceptable timeline for payment.

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

505 **FAILURE OF TIMELY PAYMENT**

506
507 9. Pursuant to WIIN Act § 4007, Reclamation may contribute up to twenty-five (25)
508 percent of the Sites Project Costs. Reclamation shall diligently pursue funding –within its
509 authorities— sufficient to meet its obligations under this Agreement in a timely manner.

510 (a) Fixed Project Costs for Completion.

511 (i) Reclamation shall diligently pursue funding—within its
512 authorities—so as to ensure there are sufficient funds appropriated to cover two ~~(2)~~ Years of
513 Fixed Project Costs, based on costs anticipated to be incurred during the following two (2) Year
514 period based on Exhibit A the Spend Plan. If sufficient funds have not been appropriated to cover
515 such costs, then Reclamation shall develop a plan to pursue funding for Fixed Project Costs
516 sufficient to meet its obligations in a timely manner and the Parties shall meet and confer to
517 review such plan.

518 (ii) The Sites Authority will provide Reclamation with a billing
519 statement for Reclamation’s share of Fixed Project Costs, based on such costs anticipated to be
520 incurred during the following one (1) ~~y~~ Year based on Exhibit A the Spend Plan, and
521 documentation of any allocated funds shall be due within 30 days of issuance of the billing
522 statement.

- 523 (iii) Reclamation will provide documentation of any allocated funds
524 within thirty (30) days of issuance of the billing statement and will endeavor to execute
525 appropriate funding mechanisms, or amendments thereto, as soon as reasonably practicable.
- 526 (iv) Consistent with Article ~~24X [FUNDS TO BE PROVIDED]~~, if
527 Reclamation has not provided documentation of sufficient allocated funds to the Sites Authority
528 within 90 days of issuance of the billing statement, the Sites Authority shall make written
529 demand upon Reclamation. The written demand shall identify the portion of Reclamation's
530 Capacity Interest that is at risk of forfeiture, being that portion of Reclamation's Capacity
531 Interest for which Reclamation has not yet provided such documentation, based on the then
532 current Exhibit A Spend Plan and in accordance with this Article ("Unpaid Capacity Interest"). If
533 such documentation is not made available to the Sites Authority within an additional 90 days
534 from the date of such demand, Reclamation is deemed to have not made timely payment and
535 forfeits the Unpaid Capacity Interest.
- 536 (v) Upon a forfeiture of Unpaid Capacity Interest by Reclamation:
- 537 i. The Sites Authority shall use its best efforts to facilitate a
538 sale of Reclamation's applicable Unpaid Capacity Interest.
- 539 ii. The other non-defaulting Storage Partners holding a
540 Capacity Interest in the same Sites Project Facilities (the Base Facilities and/or the Downstream
541 Facilities, as applicable) shall have a "right of first ~~refusal~~offer" to assume all or a portion of
542 Reclamation's Unpaid Capacity Interest and related financial obligations under this Agreement,
543 at a price mutually agreed between the Sites Authority and the Storage Partner purchasing all or
544 a portion of Reclamation's Unpaid Capacity Interest.

545 ~~iii.~~—Subject to Section (iv) below, in the event that the Sites
546 Authority is unable to facilitate a sale of all of Reclamation’s Unpaid Capacity Interest to other
547 non-defaulting Storage Partners in accordance with Section (ii) above, the Sites Authority may
548 make such Unpaid Capacity Interest available to entities other than the non-defaulting Storage
549 Partners, and may enter into an agreement with such entities for the purchase of all or a portion
550 of Reclamation’s Unpaid Capacity Interest and the assumption of the related obligations under
551 this Agreement.

552 iii.

553 ~~iv.~~—In the event that the Sites Authority is unable to enter into
554 an agreement with entities for the purchase of all or a portion of Reclamation's Unpaid Capacity
555 Interest and the assumption of the related obligations under this Agreement, the Unpaid Capacity
556 Interests shall be apportioned pro rata to Participants.

557 iv.

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

565 v.

566 ~~b.vi.~~ In the event that the Sites Authority sells all or a portion of
567 Reclamation's Unpaid Capacity Interest, such monies shall be distributed for application as

568 follows: (a) to the payment of, or (as the case may be) the reimbursement of the Sites Authority
569 for all reasonable out-of-pocket costs, expenses, disbursements and losses which shall have been
570 paid, incurred or sustained by the Sites Authority in connection with the sale of Reclamation's
571 Unpaid Capacity Interest and the collection of such monies by the Sites Authority; (b) to the
572 Sites Authority for Reclamation's full amount of its share of costs under this Agreement
573 (including any interest, expenses or other obligations); and (c) the excess, if any, shall be paid to
574 Reclamation.

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

576 (i) Reclamation shall diligently pursue funding—within its
577 authorities—so as to ensure there are sufficient funds appropriated to cover one (1) Year of
578 Fixed Project Costs and Fixed O&M Costs, based on costs anticipated to be incurred starting two
579 (2) Years after the date of the billing statement. If sufficient funds have not been appropriated to
580 cover such costs, then Reclamation shall develop a plan to pursue funding for Fixed Project
581 Costs and Fixed O&M Costs sufficient to meet its obligations in a timely manner and the Parties
582 shall meet and confer to review such plan. The Authority will provide Reclamation with an
583 estimated billing statement for Reclamation's share of Fixed Project Costs and Fixed O&M
584 Costs based on such costs anticipated to be incurred during the one (1) year period starting two
585 (2) years after the date of the billing statement.

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

590 (ii) The Sites Authority ~~will shall~~ provide Reclamation a billing
591 statement for Reclamation's share of Fixed Project Costs and Fixed O&M Costs, -based on such
592 costs anticipated to be incurred during the one (1) Yyear period starting one (1) Yyears after the
593 date of the billing statement, and documentation of any allocated funds shall be due within 30
594 days of issuance of the billing statement. which shall be due within 30 days of issuance of the
595 billing statement.

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

599 (iv) Consistent with Article ~~24 X~~ [FUNDS TO BE PROVIDED], if
600 Reclamation has not provided documentation of sufficient allocated ~~made sufficient~~ funding
601 available to the Sites Authority within 90 days of issuance of the billing statement, the Sites
602 Authority shall make written demand upon Reclamation. The written demand shall identify the
603 payment shortfall (Delinquent Payment -Amount). If ~~sufficient fundingsuch~~ documentation is not
604 made available to the Sites Authority within 90 days from the date of such demand, Reclamation
605 is deemed to have not made timely payment and is delinquent.

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

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

612 incurred or sustained by the Sites Authority in connection with the sale of Sites Water to cover
613 Reclamation's Delinquent Payment Amount;

614 ii. Reclamation shall have no right to utilize Sites
615 Water in its Capacity Interest-, no right to otherwise utilize its Capacity Interest, and agrees to
616 allow other Storage Partners to utilize its Capacity Interest until its account is no longer
617 delinquent; and

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

620 (c) Variable O&M Costs.

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

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

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

633 a. Consistent with Article 24X [FUNDS TO BE
634 PROVIDED], if Reclamation has not made sufficient funding available to the Sites Authority

635 within 30 days of issuance of the billing statement, the Sites Authority shall make written
636 demand upon Reclamation. The written demand shall identify the payment shortfall (“Delinquent
637 Amount”). If sufficient funding is not made available to the Sites Authority within 30 days from
638 the date of such demand, Reclamation is deemed to have not made timely payment and is in
639 delinquency.

640 b. Upon a Variable O&M Costs ~~delinquency~~fault of
641 Reclamation:

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

648 ii. Reclamation shall have no right to utilize Sites
649 Water in its Capacity Interest, no right to otherwise utilize its Capacity Interest, and agrees to
650 allow other Storage Partners to utilize its Capacity Interest until its account is no longer
651 ~~delinquent~~in default; and

652 iii. Reclamation’s right of first refusal in Article 5 is
653 suspended until its account is no longer ~~delinquent~~in default.

654 (d) Reclamation’s Fixed O&M Costs and Variable O&M Costs shall be
655 determined in accordance with Exhibit C-1.

656 (d) —

657

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

663 **WIND-UP**

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

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

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

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

679 ~~(a)(b)~~ If any Storage Partners ~~accept such offer for any or all of the~~
680 ~~offered~~ proceed with purchase of Project Assets interests, then the Sites Authority and such
681 purchasing Storage Partners shall work in good faith to close upon the sale of such interests
682 within 180 days after the appraiser panel's determination of fair market value.

683 ~~(b)(c)~~ Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites
684 Authority shall appoint a winding-up agent (the "**Winding-Up Agent**"). The Winding-Up Agent
685 shall, upon expiration of the time for the Storage Partners to accept the offer described in
686 sub~~article~~section ~~(ba)~~, prepare a plan for disposition of the Project Assets, which shall include
687 plans for mitigating or remediating any hazardous or unsafe conditions ~~located on the Sites~~
688 ~~Project site~~ that are a direct result of the construction of the Sites Project, ~~and, upon~~ Upon
689 approval of the Sites Authority, ~~the Winding-Up Agent shall~~ implement the disposition of the
690 Project Assets in accordance with the plan for disposition, including the disposition of
691 unexpended ~~and unobligated~~ funds ~~of held by~~ the Sites Authority ~~and to~~ the Storage Partners.
692 Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable
693 manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents
694 then held by the Sites Authority shall first be used, based on the ~~Capacity Interest~~ pro-rata share
695 of paid Sites Project Costs, to pay the following amounts in the following order of priority (i)
696 repay debts of the Sites Authority incurred for funding the Sites Project; provided, however, that
697 any moni~~se~~ys contributed by a self-funding Participant Storage Partner and held at the time of a
698 winding-up shall not be used to repay debts of the Sites Authority incurred for ~~funding~~ financing
699 the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe conditions
700 associated with ~~located on~~ the Sites Project ~~site~~ pursuant to the plan for disposition of the
701 Project Assets, and (iii) distribute cash to the Participants Storage Partners that had having

702 satisfied their ~~capital funding obligations~~ share of Sites Project Costs, provided that any
703 unexpended funds which the Sites Authority received from Reclamation will be returned to
704 Reclamation. Any remaining funds shall then be distributed to the Storage Partners based on
705 their proportional respective ~~Capacity Interests~~ paid Sites Project Costs. In the event Reclamation
706 has advanced funding above the Capacity Interest specified in this Agreement, Reclamation will
707 be reimbursed at that equivalent pro-rata share. Subject to the Sites Authority's Records
708 Management Policy, Storage Partners shall be entitled to copies of any work products developed
709 by the Sites Authority or its consultants on behalf of the Storage Partners, and the Sites Authority
710 shall convey to the Storage Partners, as tenants in common with all other Storage Partners who
711 are not in default under the Benefits and Obligations Contract, a pro rata interest based on the
712 ~~Capacity Interests~~ paid Fixed Project Costs in all real and personal property remaining after
713 implementation of the plan for disposition of the Project Assets in accordance with this Section.
714 ~~(e)(d)~~ Upon completion of the winding-up process described in this Section, the
715 Sites Authority shall adopt a resolution of termination of the Sites Project. Upon the adoption of
716 such resolution, all Capacity Interests shall be terminated.

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

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

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DISPUTE RESOLUTION

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

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

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

748 **OPINIONS AND DETERMINATIONS**

749 12. Where the terms of this Agreement provide for actions to be based upon the
750 opinion or determination of either Party to this Agreement, said terms shall not be construed as
751 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
752 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
753 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
754 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
755 provided in a timely manner. Nothing in ~~this subdivision (a) of~~ this Article is intended to or shall
756 affect or alter the standard of judicial review applicable under Federal law to any opinion or
757 determination implementing a specific provision of Federal law embodied in statute or
758 regulation.

759 (a) ~~The Contracting Officer~~ Reclamation shall have the right to make
760 determinations necessary to administer this Agreement that are consistent with the provisions of
761 this Agreement, the laws of the United States, and the rules and regulations promulgated by the
762 Secretary. Such determinations shall be made in consultation with the Sites Authority to the
763 extent reasonably practicable.

764 (b) Nothing in this Agreement, or performance hereunder, constitutes a
765 waiver of the Parties’ respective positions, opinions, or interpretations of California water rights

766 law, whatever they may be, in circumstances where there is no mutual agreement, as applicable
767 herein, for the use of the Sites Project Facilities.

768 **WATER MEASUREMENT**

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

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

782 (b) After ~~delivery~~the Delivery Point, Reclamation shall ensure that Sites
783 Water delivered under this Agreement is measured and supports the Sites Authority's applicable
784 reporting on Sites Water and Sites Water Right. The water measuring devices or water
785 measuring methods of comparable effectiveness must be acceptable to the Sites Authority.
786 Reclamation shall be responsible for installing, operating, maintaining, and repairing all such
787 measuring devices and implementing all such water measuring methods at no cost to the Sites

788 Authority. On or before the 20th calendar day of each month, Reclamation shall provide the Sites
789 Authority with the written quantity of water taken during the preceding month under this
790 Agreement.

791 **SEVERABILITY**

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

799 **HOLD HARMLESS**

800 15. (a) The Sites Authority shall indemnify, defend, and hold harmless the United
801 States, its officers, agents, and employees from and against any and all claims, damages, losses,
802 liabilities, and expenses arising out of or resulting from the United States' work under this
803 Agreement that constitutes Allowable Costs, or the design, operation, or maintenance of the
804 Sites Project, provided the claims, damages, losses, liabilities, or expenses are not the result of
805 any willful or negligent acts or omissions on the part of the United States. The Sites Authority
806 will not assert that Reclamation, its Regional Director, officers, agents, ~~or~~ employees or assigns,
807 are liable for damages of any nature whatsoever arising out of any actions or omissions by the
808 Sites Authority, its directors, officers, agents, ~~or~~ employees or assigns, related to the Sites

809 Authority's performance of this Agreement, where such liability is caused by an act, error or
810 omission of the Sites Authority, its director, officers, agents, ~~or~~ employees or assigns.

811 (b) The Parties agree that the Sites Authority, Reclamation shall defend, and
812 hold harmless the Sites Authority, its officers, agents, and employees will not be liable for any
813 from and against any and all claims, damages, losses, liabilities, and expenses arising out of or
814 resulting from the Unites States' control, carriage, handling, use, disposal, or distribution of Sites
815 Water beyond the Delivery Point, [up to \$XXXXXXXXXX amount], except for any damage or
816 claims arising in connection with (i) acts or omissions of the Sites Authority or any of its
817 directors, officers, employees, agents, and assigns with the intent of creating the situation
818 resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its
819 directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or
820 directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a
821 malfunction of a Sites Project Facility.

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

826 **NOTICES**

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

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

833 17. The expenditure or advance of any money or the performance of any obligation of
834 the United States under this Agreement shall be contingent upon appropriation or allotment of
835 funds. Absence of appropriation or allotment of funds shall not relieve the Sites Authority from
836 any obligations under this Agreement. No liability shall accrue to the United States in case funds
837 are not appropriated or allotted.

838 **OFFICIALS NOT TO BENEFIT**

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

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

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

848 **BOOKS, RECORDS, AND REPORTS**

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

859

COMPLIANCE WITH LAWS

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

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

868 (c) In protecting the interests of the United States, Reclamation’s contracts
869 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.

870 The Sites Authority shall comply with all applicable Federal, State, and local laws, executive
871 orders, rules and regulations applicable to its performance under this Agreement. These laws
872 may include environmental, civil rights, and cultural resources protection laws, among others, as
873 well as laws that may be later enacted.

874

COMPLIANCE WITH CIVIL RIGHTS

875 22. (a) The Sites Authority shall comply with Title VI of the Civil Rights Act of
876 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title
877 V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
878 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub.
879 L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
880 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
881 Interior and/or Bureau of Reclamation.

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

889 (c) The Sites Authority makes this Agreement in consideration of and for the
890 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other

891 Federal financial assistance extended after the date hereof to the Sites Authority by the Bureau of
892 Reclamation, including installment payments after such date on account of arrangements for
893 Federal financial assistance which were approved before such date. The Sites Authority
894 recognizes and agrees that such Federal assistance will be extended in reliance on the
895 representations and agreements made in this article and that the United States reserves the right
896 to seek judicial enforcement thereof.

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

899 REPORTING REQUIREMENTS

900 23. The Sites Authority shall provide Reclamation with progress and financial status
901 reports to support disbursements under Exhibit A ~~the Spend Plan~~ and reporting requirements
902 under Federal Reclamation law. If the reporting requirements of the funding mechanism utilized
903 to disburse funds to the Sites Authority does not conflict with (a) and (b) below, the Sites
904 Authority will submit reports to Reclamation pursuant to this Article.

905 (a) Progress Reports: As of the Effective Date ~~of this Agreement~~ through
906 Completion, the Sites Authority shall provide progress reports semi-annually due April 30 and
907 October 31 of each Year. ~~after funds are disbursed and before any subsequent disbursement of~~
908 funds pursuant to the Spend Plan. Progress reports must contain a narrative of the work
909 accomplished, descriptions of the contracts, major subcontracts, and modifications implemented
910 during the reporting period, architect, and engineer (A/E) service deliverables, the percentage of
911 work completed, the Completion status, and any problems encountered, and corrective actions
912 taken. Any issues that impact or may pose a future risk to cost, scope, or schedule will be
913 identified. The report will include an updated schedule.

914 (b) Financial Reports: As of the Effective Date ~~of this Agreement~~ through
915 Completion, the Sites Authority shall provide financial reports using Standard Form-425
916 (Federal Financial Report). Reports shall be provided semi-annually due April 30 and October 31

917 ~~of each Year. after funds are disbursed and before any subsequent disbursement of funds~~
918 ~~pursuant to the Spend Plan.~~

919 **FUNDS TO BE PROVIDED**

920 ~~23.24.~~ In accordance with the Prompt Payment Act, Reclamation shall transmit payment
921 to the Sites Authority in accordance with Exhibit A, Article 9 and Article 10 and subject to
922 Article 16 ~~of this Agreement. Any applicable interest penalties shall be paid by Reclamation and~~
923 ~~shall not be credited towards Reclamation's share of Project Costs.~~

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

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

937 (c) The Sites Authority will deposit each payment in an individual insured
938 account or accounts for Reclamation, established and held by the Sites Authority, separate and

939 apart from the Sites Authority's other funds and accounts, and shall apply such amount,
940 including the investment earnings thereon, to pay Reclamation's ~~share of the cost of the~~
941 ~~applicable proportionate~~ proportionate share of Sites Project ~~costs~~ Costs in accordance with the
942 terms of this Agreement. Such accounts and any investments shall be held in compliance with
943 applicable law.

944 ~~(e)~~—The Sites Authority will provide Reclamation with an invoice for
945 Reclamation's share of Fixed Project Costs, based on such costs anticipated to be incurred during
946 the following quarter based on Exhibit A ~~the Spend Plan~~, and payment shall be due within 30
947 days of issuance of the invoice.

948 (d) _____

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

954 **MEDIUM FOR TRANSMITTING PAYMENTS**

955 ~~24.25.~~ (a) All payments from the Sites Authority to the United States under this
956 Agreement shall be by the medium requested by the United States on or before the date payment
957 is due. The required method of payment may include checks, wire transfers, or other types of
958 payment specified by the United States.

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

963

964 **AGREEMENT DRAFTING CONSIDERATIONS**

965 25.26. This Agreement has been negotiated and reviewed by the ~~P~~Parties hereto, each of
966 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced
967 Articles of this Agreement have been drafted, negotiated, and reviewed by the ~~P~~parties, and no
968 one ~~P~~party shall be considered to have drafted the stated articles. Single-spaced articles are
969 standard articles pursuant to Reclamation policy.

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

972 (SEAL) THE UNITED STATES OF AMERICA

973 By: _____
974 Regional Director
975 Interior Region 10: California-Great Basin
976 Bureau of Reclamation

977

SITES AUTHORITY

978

By: _____
Chair, Board of Directors

979

980 Attest:

981 _____