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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THIS AGREEMENT, effective the _____ day of ____________, 20____, ("Effective Date") in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to, the Act of August 4, 1939 (53 Stat. 1187; 43 U.S.C. Part 485), Sections 4007(c), 4007(e), 4007(f), and 4007(g) of the Water Infrastructure Improvements for the Nation Act ("WIIN Act") of December 16, 2016 (Public Law 114-322, 130 Stat. 1865) between THE UNITED STATES OF AMERICA acting by and through the Bureau of Reclamation, hereinafter referred to as the "Contracting Officer" or "Reclamation", and the SITES PROJECT AUTHORITY, hereinafter referred to as the "Sites Authority", duly organized, existing, and acting pursuant to the laws of California. The United States and the Sites Authority are referred to collectively as the "Parties," and individually as a "Party."

WITNESSETH, that:

EXPLANATORY RECITALS

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

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

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

[4th] WHEREAS, Reclamation completed the North-of-the-Delta Offstream Storage – Sites Feasibility Report ("Feasibility Report") in December 2020 which determined the potential Federal and non-Federal interest in the Sites Project; and

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

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

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

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

[8th] WHEREAS, the Sites Authority intends to enter into and comply with contracts with State and local agencies pursuant to which the State and local agencies will receive certain benefits (including water service) and have certain obligations related to the Sites Project. These include (i) 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; (ii) Public Benefits Agreements with California State Agencies; (iii) Proposition 1 Water Storage Investment Program Contract with the California Water Commission; and (iv) Benefits and Obligations Contract.

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

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

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

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

DEFINITIONS

- When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the following term:

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

(b) “Anadromous Fish Benefits” shall mean the Sites Water in Reclamation’s Capacity Interest in Sites Reservoir that Reclamation manages to meet its environmental compliance obligations.

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

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

(e) “Beneficiary Pays Principles” means the principle for allocating all costs associated with delivering certain Project benefits, including public and non-public benefits, to the party receiving such benefits.

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

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

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

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

~~(i)~~(j) “Delivery Point” shall mean Funks Reservoir~~, or~~ Terminal Regulating Reservoir or the confluence with the Sacramento River Knights Landing Outfall Gates, at which the Sites Authority will make water supplies available to Reclamation.

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

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

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

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

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

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

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

~~(o)~~(q) "Generally Accepted Accounting Principles" shall mean such accepted accounting practices as established at the time for use at public agencies in the United States of America, consistently applied.

~~(p)~~(r) "Good Industry Practice" shall mean the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, this Agreement and all applicable law and governmental approvals in conformance with applicable professional engineering principles, construction, operations and maintenance practices generally accepted as standards of the industry in the State. In the case of the Partner Facilities, Good Industry Practice shall be the standard of care required of a designer, engineer, constructor, supplier, manager, operator or maintenance provider under the Partner Agreements.

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

~~(r)~~(t) "In-kind Services" shall mean eligible time and effort, real and personal property, and goods and services that may be applied to cost-share, as defined, evaluated and documented in Article 5 and Exhibit H. Valuation of In-kind Services shall be in accordance with 2 CFR Part 200 subpart e.

~~(s)~~(u) "O&M Costs" shall mean Fixed O&M Costs and Variable O&M Costs.

~~(t)~~(v) "Participants" shall mean the parties listed as Participants in Exhibit B.

~~(u)~~(w) "Partner Agreements" shall mean any agreement between the Sites Authority and another entity for the diversion, release and conveyance of Sites Water to or from the Sites Project, as listed in Exhibit B.

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

~~(w)~~(y) "Project Assets" shall mean all of the tangible and intangible assets relating to the Sites Project, including (i) the Sites Owned Facilities, (ii) all real property determined by the Sites Authority to be required for construction or operation of the Sites Project, (iii) rights over the Sites Project Facilities in the form of license, right-of-way or otherwise, (iv) tangible assets such as foundations, buildings, pavements, works, and equipment, (v) the Sites Water Right, and (vi) all governmental approvals. For the avoidance of doubt, Project Assets do not include the Partner Facilities, Federal Facilities, or Storage Partners' Capacity Interests, but may include the Sites Authority's rights with respect to such facilities.

~~(x)~~(z) "Refuge Water Points of Acceptance" shall mean locations at which the Sites Authority will make water supplies available to Reclamation for delivery to refuges as outlined in Exhibit D.

~~(y)~~(aa) "Refuge Water Points of Delivery" shall mean locations at which the Water Purveyor delivers water supplies made available by Reclamation to the refuges.

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

~~(z)~~(cc) "Pro-rata Cost Share" shall mean the proportionate interest based on each Storage Partner's paid ~~Sites~~ Fixed Project Costs after 1 January 2018 as determined in accordance with Exhibit J. In the case of Reclamation, such costs will be consistent with Article 5.

~~(aa)~~(dd) "Secondary Delivery Point" shall mean a location designated by Reclamation for delivery of Sites Water as described in Article 7(b).

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

~~(cc)~~(ff) "Sites Owned Facilities" shall mean the physical infrastructure and capital improvements for the Sites Project owned by the Sites Authority, including dams, reservoir(s), pipelines, pump stations, and other facilities necessary or appropriate for providing water supply and storage including the facilities listed as Sites Owned Facilities in Exhibit B, excluding the real property required for the Sites Project.

~~(dd)~~(gg) "Sites Project Costs" shall mean the sum of Fixed O&M Costs, Fixed Project Costs and Variable O&M Costs payable by or credited to Reclamation under this Agreement, or each of them, as the context requires.

~~(ee)~~(hh) "Sites Project Facilities" shall mean collectively the Sites Owned Facilities, Federal Facilities and Partner Facilities, or any of them as the context requires.

~~(ff)~~(ii) "Sites Project" shall mean the Sites Project Facilities utilized by the Sites Authority for the purpose of providing storage and conveyance of water for use by Storage Partners, and other benefits, as such project may be modified from time to time.

~~(gg)~~(jj) "Sites Reservoir" shall mean the 1.5 million acre-feet off-stream storage reservoir near Maxwell, California.

~~(hh)~~(kk) "Sites Water" shall mean the water that is appropriated under the Sites Water Right and is considered Non-Project Water, as defined in Exhibit F.

~~(ii)~~(ll) "Sites Water Right" shall mean the water right [Order XXXX] obtained and owned by the Sites Authority for the Sites Project.

~~(jj)~~(mm) "Storage Partner" shall mean the governmental agencies, water organizations, and others who have funded and received Capacity Interest and the associated Sites Water, as listed in Exhibit B.

~~(kk)~~(nn) "Water Purveyor" shall mean contractors with which Reclamation has agreements to convey water to refuges.

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

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

TERM OF AGREEMENT

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

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

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

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

~~(c)~~(d) This Agreement requires pro-rata calculations in Sections 10(a), 11, Exhibit E and [___]. The Parties shall agree equations for each of those pro-rata allocation calculations, with examples applying these equations, as an addition to this Agreement before the Sites Authority approves a resolution confirming commencement of all or a portion of construction of the Project.

DEVELOPMENT, CONSTRUCTION AND OWNERSHIP OF THE SITES PROJECT

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

(b) By this Agreement taking effect and the Sites Authority accepting payments from Storage Partners, the Sites Authority does not warrant that it will construct and achieve C~~c~~ompletion.

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

FEDERAL PARTICIPATION IN THE SITES PROJECT

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

(a) Reclamation commits to the Sites Authority the $798 million in federal funds appropriated prior to the Effective Date towards a portion of the grant and ownership of the Capacity Interest and subject to Article 9 and Article 11.

(b) After the Effective Date, Reclamation shall diligently pursue, within its authorities, the remaining funds necessary to pay for the Fixed Project Costs commensurate with the 16% Capacity Interest as further described in Article 5. In determining the funding mechanism to be used for the Sites Project, the Parties agree to meet and confer prior to Reclamation selecting a funding mechanism. Reclamation agrees to select the available mechanism within its authorities that is most efficient and least burdensome to the Parties and consistent with this Agreement.

(c) Reclamation's 16% Capacity Interest shall be subject to Article 10.

~~a.~~(d) The Parties agree that the grant of Reclamation's Capacity Interest shall not commence until due execution of:

i. This Agreement by Reclamation and the Sites Authority;

ii. The contracts between the Sites Authority, each of the Participants and the Acquirer granting Capacity Interest; and

iii. The contracts between the Sites Authority and the State of California granting Capacity Interest,

collectively representing 100% of the Base Facility Capacity Interest and provision of all legal opinions required under such contracts.

(b) Reclamation intends to execute contracts on a schedule to support Project implementation with the Authority consistent with Reclamation's standards terms and conditions and covering:

Land Use Authorization allowing use of any Federally-owned property needed to locate and build Sites Project Facilities; and

Provision of non-potable water service for the duration of construction at the Project worksites served from existing Federal Facilities, subject to availability as determined by Reclamation.

~~(d)~~

COSTS ASSOCIATED WITH THE SITES PROJECT

5. All Sites Project Costs associated with this Agreement shall be in line with Generally Accepted Accounting Principles and in accordance with 43 Code of Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, and the Reclamation Project Act of 1939, the Contributed Funds Act of 1922, and the Anti-Deficiency Act (31 U.S.C. § 1341 et seq.).

(a) Pursuant to the 2015 Feasibility Memorandum of Understanding, as amended, and the 2023 Pre-construction Memorandum of Agreement, entered into and agreed upon by the Parties, Reclamation's In-Kind Services through Year 2025 total $10,565,259.72 and are considered Allowable Costs credited to Reclamation's share of Fixed Project Costs related to Completion. The Parties agree to strictly abide by the advanced approval conditions described in Exhibit H. Reclamation will provide a final accounting of prior costs between January 1st 2026 and the Effective Date within 60 days after the Effective Date;

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

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

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

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

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

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

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

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

~~(1)~~(h) In-kind Services: Reclamation's In-kind Services will count toward Reclamation's contribution to Sites Project Costs as described in this Agreement. In-kind

Services shall only be credited if the scope, valuation methodology, and allocation basis are in accordance with Exhibit H.

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

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

~~(h)~~(k) Reclamation and the Sites Authority will establish, at a minimum, quarterly check-ins to monitor actual expenditures related to the Sites Project, and to discuss other items, including but not limited to, funding and any additional agreements. If there is a deficiency in funding from Reclamation under Exhibit A, Article 10 shall apply and if there is a deficiency in funding from the Sites Authority under Exhibit A, Article 11 shall apply.

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

LEASE OR SALE OF CAPACITY INTEREST, AND SITES WATER

6. Reclamation shall have first right of refusal for lease, purchase, and defaulted interests as described in Exhibit E.

OPERATION OF SITES OWNED FACILITIES

7. The Sites Authority will operate and maintain the Sites Owned Facilities in good faith, in accordance with Good Industry Practice and in accordance with all applicable agreements and this Agreement provided that (i) the Storage Partners provide all funding required for operations and maintenance; and (ii) the Sites Authority and the Reservoir Management Board, have not mutually determined the continued operation of the Sites Project is infeasible and impractical. The Sites Authority will take diligent and commercially reasonable steps to protect, preserve, maintain, and defend ~~protect~~ the Sites Water Right from impairment, diminution, loss, forfeiture, abandonment, or adverse claims and will manage, control, and protect Sites Water in good faith and in accordance with all applicable laws and regulations. Upon becoming aware of any actual or threatened impairment, injury, loss, or interference with the Sites Water Right, the Sites Authority shall promptly investigate the matter and pursue such administrative, regulatory, judicial, or other remedies as are reasonably necessary to mitigate losses, recover damages, seek appropriate relief, enforce the Sites Water Right, and prevent or minimize future losses or impairment. Any costs to the Sites Authority associated with such actions shall be payable by Storage Partners and follow Beneficiary Pays Principles. Nothing in this Article shall require the Sites Authority to commence or continue litigation if, after such consultation with legal counsel, the Sites Authority reasonably determines that such action is not likely to provide a material benefit to the Sites Water Right, provided that the Sites Authority

shall first consider and pursue other reasonable measures to protect the Sites Water Right and prevent further loss.

(a) Sites Owned Facilities will be operated in a manner that avoids adverse effects to the Central Valley Project, its water rights, and federal facilities.

(b) Reclamation agrees to timely provide requests for Sites Water to be stored in Reclamation's Base Facilities Capacity Interest and Sites Water to be released from Reclamation's Base Facilities Capacity Interest to the Delivery Points. The Sites Authority agrees to take reasonable actions, consistent with applicable law and this Agreement, to achieve Reclamation's storage and release requests to the Delivery Points and undertake all commercially reasonable measures, consistent with applicable law and Partner Agreements, to manage, control, and protect Sites Water to the applicable Delivery Point.

(c) If Reclamation designates the Sacramento River Delivery Point as the applicable Delivery Point, all releases of Sites Water to the Sacramento River Delivery Point shall be subject to applicable law, governmental approvals, and Partner Agreements. The Sites Authority shall use commercially reasonable efforts to negotiate, enter, maintain, comply with, and enforce Partner Agreements necessary to convey Sites Water to the Sacramento River Delivery Point. Reclamation shall bear all costs (monetary or otherwise), the risk of loss, and any shortfall or reduction in Sites Water between Funks Reservoir and/or the Terminal Regulating Reservoir, as applicable, and the Sacramento River Delivery Point.

~~(b)~~(d) Reclamation may specify one or more~~a~~ Secondary Delivery Point~~(s)~~ in its release request subject to the reasonable approval of~~by~~ the Sites Authority. The Sites Authority will use commercially reasonable efforts to (i) negotiate, enter into, maintain, comply with, and enforce Partner Agreements necessary for such conveyance and (ii)~~take actions reasonably~~

~~practicable to~~ take actions reasonably practicable to assist Reclamation in conveying its Sites Water to the approved Secondary Delivery Point(s), subject to applicable law, governmental approvals, and Partner Agreements. Reclamation shall bear all costs (monetary or otherwise), ~~and~~ the risk of loss, and any shortfall or reduction in Sites Water between the Delivery Point and Secondary Delivery Point(s).

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

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

~~(e)~~(g) The Parties agree Reclamation bears the risk of loss or reduction in Sites Water on a pro-rata and substantially similar basis as other Storage Partners; provided, however, that if Reclamation designates a Delivery Point other than Funks Reservoir or the Terminal Regulating Reservoir, Reclamation shall bear the risk of loss and any shortfall or reduction in Sites Water between Funks Reservoir and/or the Terminal Regulating Reservoir, as applicable, and such Delivery Point.

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

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

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

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

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

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

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

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

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

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

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

ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE

8. Reclamation will serve as the ESA Section 7 consultation lead for the initial construction and water-related operation of Sites Project Facilities. Reclamation and the

Authority will meet and confer on future Sites Project activities to determine the most appropriate ESA consultation approach and lead agency consistent with applicable law and regulation.

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

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

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

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

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

EXCUSED PERFORMANCE

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

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.

(a) Fixed Project Costs related to Completion.

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

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

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

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

(v) If Reclamation has not provided documentation of sufficient allocated funds to the Sites Authority within ninety (90) days of issuance of the billing statement, the Sites Authority shall make written demand upon Reclamation. The written demand shall identify the portion of Reclamation’s Capacity Interest that is at risk of forfeiture, being that portion of Reclamation’s Capacity Interest for which Reclamation has not yet provided such documentation, based on the then current Exhibit A and in accordance with this Article (“Unpaid Capacity Interest”). If such documentation is not made available to the Sites Authority within an additional ninety (90) days from the date of such demand, Reclamation is deemed to have not made timely payment and forfeits the Unpaid Capacity Interest.

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

i. The Sites Authority shall use ~~its best~~commercially reasonable efforts to facilitate a sale, for Reclamation’s account, of Reclamation’s applicable Unpaid Capacity Interest.

ii. The other non-defaulting Storage Partners holding a Capacity Interest in the same Sites Project Facilities (the Base Facilities and/or the Downstream

Facilities, as applicable) shall have a right of first offer~~refusal~~ to assume all or a portion of Reclamation's Unpaid Capacity Interest and related financial obligations under this Agreement, at a price mutually agreed between the Sites Authority and the Storage Partner purchasing all or a portion of Reclamation's Unpaid Capacity Interest.

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

~~b.~~iv. In the event that the Sites Authority is unable to enter into an agreement with entities for the purchase of all or a portion of Reclamation's Unpaid Capacity Interest and the assumption of the related obligations under this Agreement, the Unpaid Capacity Interest shall be apportioned pro rata to the non-defaulting Participants based on their applicable Base Facilities Capacity Interest and/or Downstream Facilities Capacity Interest, as calculated in accordance with Exhibit J.

~~i.~~v. Notwithstanding that all or any portion of Reclamation's Unpaid Capacity Interest is sold, Reclamation shall remain liable to the Sites Authority for any costs incurred prior to said sale except that such liability shall be discharged to the extent that the buyer undertakes that liability. In the event of such sale, Reclamation shall not remain liable for the future Sites Project Costs associated with such sold Capacity Interest.

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

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

(i) Reclamation shall diligently pursue funding—within its authorities—so as to ensure there are sufficient funds appropriated to cover a minimum of one (1) Year of Fixed Project Costs and Fixed O&M Costs, based on costs anticipated to be incurred starting two (2) Years after the date of the billing statement. If sufficient funds have not been appropriated to cover such costs, then Reclamation shall develop a plan to pursue funding for Fixed Project Costs and Fixed O&M Costs sufficient to meet its obligations in a timely manner and the Parties shall meet and confer to review such plan.

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

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

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

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

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

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

iii. Reclamation's right of first refusal in Article 6 is suspended until its account is no longer delinquent; and

iv. . Upon full payment of delinquent amounts, Storage Partners shall be given reasonable time to vacate Reclamation's Capacity Interest.

(c) Variable O&M Costs.

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

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

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

a. Consistent with Article 25, if Reclamation has not made sufficient funding available to the Sites Authority within thirty (30) days of issuance of an invoice, the Sites Authority shall make written demand upon Reclamation. The written demand shall identify the payment shortfall ("Delinquent Amount"). If sufficient funding is not made available to the Sites Authority within thirty (30) days from the date of such demand, Reclamation is deemed to have not made timely payment and is in delinquency.

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

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

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

iii. Reclamation's right of first refusal in Article 6 is suspended until its account is no longer delinquent; and

iv. Upon full payment of delinquent amounts, Storage Partners shall be given reasonable time to vacate Reclamation's Capacity Interest.

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

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

WIND-UP

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

(a) Upon adoption of a Wind-Up Resolution by the Sites Authority, and subject to compliance with applicable Partner Agreements, this Agreement, and the Proposition 1 Water Storage Investment Program Funding Agreement, the Sites Authority shall first offer to sell the Project Assets to Storage Partners at a fair market value as determined by a majority of a panel of three (3) licensed appraisers, including

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

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

(b) The offer to sell shall follow the process in Exhibit E, II (e) as if the Sites Authority were the selling Storage Partner.

(c) If any Storage Partners proceed with purchase of Project Assets, then the Sites Authority and such purchasing Storage Partners shall work in good faith to close upon the sale of such interests within 180 days after the appraiser panel's determination of fair market value.

(d) Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites Authority shall appoint a winding-up agent (the "**Winding-Up Agent**"). The Winding-Up Agent shall, upon expiration of the time for the Storage Partners to accept the offer described in subarticle (a), prepare a plan for disposition of the Project Assets, which shall include plans for mitigating or remediating any hazardous or unsafe conditions that are a direct result of the construction of the Sites Project. Upon approval of the Sites Authority, the Winding-Up Agent shall implement the disposition of the Project Assets in accordance with the plan for disposition, including the disposition of unexpended funds held by the Sites Authority to the Storage Partners. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents then held by the Sites Authority shall first be used, based on the Pro-rata Cost Share, to pay the following amounts in the following order of priority (i) repay debts of the Sites Authority incurred for funding the Sites Project; provided, however, that any monies contributed by a self-funding Storage Partner and held at the time of a winding-up shall not be used to repay debts of the Sites Authority incurred for financing the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe conditions associated with the Sites Project pursuant to the plan for disposition of the Project Assets, and (iii) distribute cash to the Storage Partners having satisfied their share of Sites Project Costs, provided that any unexpended funds which the Sites Authority received from Reclamation will be returned to Reclamation. Any remaining funds shall then be distributed to the Storage Partners based on their Pro-rata Cost Share. Subject to the Sites Authority's Records Management Policy, Storage Partners shall be entitled to copies of any work products developed by the Sites Authority or its consultants on behalf of the Storage Partners, and the Sites Authority shall convey to the Storage Partners, as tenants in common with all other Storage Partners who are not in default under the Benefits and Obligations Contract, a pro-rata interest based on the Pro-rata Cost Share in all real and personal property remaining after implementation of the plan for disposition of the Project Assets in accordance with this Section.

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

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

DISPUTE RESOLUTION

12. 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 the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such action; *Provided,* 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.

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

OPINIONS AND DETERMINATIONS

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

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

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

WATER MEASUREMENT

14. The Sites Authority is responsible for the measurement and recording of all Sites Water delivered pursuant to this Agreement up to and including the Delivery Point, and any additional location(s) mutually agreed to in writing by the Sites Authority and Reclamation. If Reclamation designates the Sacramento River Delivery Point as its Delivery Point, the Sites Authority's measurement and recording responsibilities under this Article shall extend through and include the Sacramento River Delivery Point.

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

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

(b) Following delivery at the applicable ~~After the~~ Delivery Point, Reclamation shall ensure that Sites Water delivered under this Agreement is measured and supports the Sites Authority's applicable reporting on Sites Water and the Sites Water Right. The water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Sites Authority and Reclamation. Reclamation shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the Sites Authority. Reclamation shall provide the Sites Authority with the written quantity of water taken during the preceding month under this Agreement, on a mutually agreed upon schedule. Annual totals will be finalized on a mutually agreed upon schedule.

SEVERABILITY

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 to the Parties by this Agreement to become unavailable or materially altered.

HOLD HARMLESS

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 to the extent that such work constitutes Allowable Costs, 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, 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, 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, employees or assigns.

(b) The Parties agree that the Sites Authority, its officers, agents, and employees will not be liable for any claims arising out of or resulting from the Unites States' control, carriage, handling, use, disposal, or distribution of Sites Water beyond Funks Reservoir and/or the Terminal Regulating Reservoir, as applicable, including the conveyance of Sites Water to the Sacramento River Delivery Point or any Secondary Delivery Point ~~the Delivery Point~~, except for any damage or claims arising in connection with (i) acts or omissions of the Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a malfunction of a Sites Owned~~Project~~ Facilities~~y or other facilities for which the Sites Authority is responsible under this Agreement~~.

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

NOTICES

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

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

BOOKS, RECORDS, AND REPORTS

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

COMPLIANCE WITH LAWS

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

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

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

COMPLIANCE WITH CIVIL RIGHTS

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

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

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

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

REPORTING REQUIREMENTS

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

(a) Progress Reports: As of the Effective Date through Completion, the Sites Authority shall provide semi-annual progress reports. Progress reports must contain a narrative of the work accomplished, descriptions of the contracts, major subcontracts, and modifications implemented during the reporting period, architect, and engineer (A/E) service deliverables, the percentage of work completed, the Completion status, and any problems encountered, and corrective actions taken. Any issues that impact or may pose a future risk to cost, scope, or schedule will be identified. The report will include an updated schedule.

(b) Financial Reports: As of the Effective Date through Completion, the Sites Authority shall provide semi-annual financial reports using Standard Form-425 (Federal Financial Report).

FUNDS TO BE PROVIDED

25. In accordance with the Prompt Payment Act, Reclamation shall transmit payment to the Sites Authority subject to Article 5, Article 10 and Article 18.

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

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

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

(d) The Sites Authority will provide Reclamation with an invoice for Reclamation's share of Fixed Project Costs, Fixed O&M Costs, Variable O&M Costs based on such costs anticipated to be incurred during the following quarter based on Exhibit A and billing statements as applicable, and payment shall be due within thirty (30) days of issuance of an invoice.

~~(d)~~(e) In the event any amount due to the Sites Authority from Reclamation under this Agreement are not paid when due, in addition to exercising any rights afforded the Sites Authority under Article 12 or any other right or remedy the Sites Authority may have, the Sites Authority will receive interest on the Delinquent Payment Amount pursuant to the Prompt Payment Act, as amended (31 USC 3901, et seq.); Provided that, the Sites Authority shall have previously submitted appropriate invoices to Reclamation pursuant to Article 10. Such costs shall not be credited toward Reclamation's share of Sites Project Costs.

~~(e)~~

MEDIUM FOR TRANSMITTING PAYMENTS

26. (a) All payments from the Sites Authority to the United States under this Agreement shall be by the medium requested by the United States on or before the date payment

is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

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

GOVERNANCE

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

AGREEMENT DRAFTING CONSIDERATIONS

~~27.~~28. This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. The double-spaced Articles of this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be considered to have drafted the stated articles. Single-spaced articles are standard articles pursuant to Reclamation policy.

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

(SEAL) THE UNITED STATES OF AMERICA

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

SITES AUTHORITY

By:____
Chair, Board of Directors

Attest:

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