

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
California

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

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Exhibit A: Spend Plan

Exhibit B: Sites Project Information, Capacity Interest and Facilities

Exhibit C: ~~Associated Reclamation-owned Facilities~~

Exhibit D: Water Measurement and Delivery Points List of Sites Authority  
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Exhibit E: ~~Capacity Interest~~

Exhibit F: Excess Capacity Contract

Exhibit G: Agreement Between the Department of Water Resources of the State of California, The United States Bureau of Reclamation, and The Sites Project Authority to Coordinate in the Operations of the Sites Reservoir Project

Exhibit H: Allowable Costs; Approval, Documentation, and Cost Allocation

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

12           WITNESSETH, that:

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**EXPLANATORY RECITALS**

[1<sup>st</sup>] 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

[2<sup>nd</sup>] 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

[3<sup>rd</sup>] WHEREAS, the Sites Project 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

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

[5<sup>th</sup>] 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

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

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

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

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

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

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

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

59

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

61 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

94 (i) "Delivery Point" shall mean Funks Reservoir or Terminal Regulating  
95 Reservoir, at which the Authority will make water supplies available to Reclamation outlined in  
96 Exhibit D to this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 **TERM OF AGREEMENT**

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

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

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

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

231 **FEDERAL PARTICIPATION IN THE SITES PROJECT**

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

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

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

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

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**COSTS ASSOCIATED WITH THE SITES PROJECT**

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4. All Project ~~costs~~Costs associated with this Agreement shall be compliant with Federal law and in line with Generally Accepted Accounting Principles. In accordance with 43 Code of Federal Regulations Part 429, Section 429.17, Subpart D, the Reclamation Act of 1902, 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.). Reclamation costs incurred after the Effective Date of this Agreement shall only be credited, reimbursed or otherwise applied toward Reclamation's participation in the Sites Project if they constitute Allowable Costs.

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(a) Upon the determination of Completion of construction of the Sites Project, Reclamation and the 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 final Capacity Interest ~~and Share~~ allocation to Reclamation. The final Capacity Interest ~~and Share~~ attributable to Reclamation's final investment will be documented in Exhibit E to this Agreement.

260 (b) The Parties agree:

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

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

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

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

275 a. Fixed O&M Costs assigned annually to  
276 Reclamation shall be proportionate to Reclamation's Capacity Interest ~~and Share~~ and associated  
277 Downstream Facilities Capacity Interest.

278 b. Variable O&M Costs assigned annually to  
279 Reclamation shall be proportionate to Reclamation's use of its Capacity Interest ~~and Share and~~  
280 associated Downstream Facilities Capacity Interest.

281 (2) Use of Reclamation's unused Downstream Facilities  
282 Capacity ~~Share~~Interest: In the event a Storage Partner utilizes Reclamation's Downstream

283 Facilities Capacity ~~Share-Interest~~ in the Dunnigan Pipeline, the Authority will develop and  
284 charge the Storage Partner a rate for such use commensurate with the use, unless otherwise  
285 directed by Reclamation. Proceeds received will be credited toward Reclamation's fixed and  
286 variable O&M cost.

287 (3) In-kind Services: Reclamation's In-kind Services will count  
288 toward Reclamation's contribution to ~~Sites-Project~~ Ceosts as described in this Agreement. In-  
289 kind services shall only be credited if the scope, valuation methodology, and allocation basis are  
290 in accordance with Exhibit H.

291 ~~(e) — Non-allowable Costs include, but are not limited to:~~

292 (i) Any interest or fees related to financing activity of the Sites  
293 Authority and their Storage Partners shall not be paid by Reclamation.

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

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

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

303 ~~(e)(d)~~ Reclamation and the Authority will establish, at a minimum, quarterly  
304 check-ins to monitor actual expenditures related to the Sites Project, and to discuss other items,

305 including but not limited to, funding and any additional agreements. If there is a deficiency in  
306 expenditures under Exhibit A, Articles 9 and 10 shall apply.

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

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

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

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

325 6. The Sites Authority will operate and maintain the Sites ~~Project Owned~~ Facilities  
326 in good faith and in accordance with all applicable agreements and Article 20. The Sites

327 Authority will protect the Sites Water Right and will manage, control, and protect Sites Water in  
328 good faith and in accordance with all applicable laws and regulations.

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

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

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

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

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

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

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

359 ~~(g)~~(h) Subject to Section (f) below, the Sites Authority or Reclamation may  
360 request Capital Improvements ~~to the Sites Project Facilities~~ to provide an added benefit to the  
361 Sites Project. Such Capital Improvements shall be subject to approval by the Sites Authority.  
362 The Sites Authority will prepare and distribute a document detailing the anticipated Project ~~costs~~  
363 Costs and benefits of the proposed Capital Improvements.

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

369 ~~(i)~~(j) In the event that proposed Capital Improvements are not approved by the  
370 Sites Authority, Storage Partners may elect to continue with the Capital Improvements. Those  
371 Project costs and benefits associated with such Capital Improvements shall be allocated only to

372 the subset of Storage Partners electing to proceed with the Capital Improvements in accordance  
373 with an agreement among the Sites Authority and such Storage Partners.

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

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

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

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

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

391 ~~(p)~~ The Sites Authority and Reclamation each agree that Reclamation shall be  
392 allowed, at reasonable times and upon reasonable prior notice, and at Reclamation's expense, to  
393 enter onto Sites ~~Project Owned~~ Facilities for reasonable purposes in accordance with the Sites

394 Authority's reasonable safety regulations and policies and subject to applicable law and  
395 governmental approvals.

396 **ENVIRONMENTAL AND CULTURAL COVERAGE AND COMPLIANCE**

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

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

407 (b) It is the understanding of the Parties that future reinitiation of consultation  
408 on the operations of the Central Valley Project after an initial incidental take statement for the  
409 effects from the operations of the Sites Project does not automatically require a reinitiation of  
410 consultation on the Sites Project. The Parties agree to meet and confer before reinitiation of  
411 consultation on the Sites Project to jointly review, among other things, the information before  
412 each agency, potential approaches, and possible outcomes. In any consultation that has the  
413 potential to result in impacts to the Sites Project operations, Reclamation will coordinate with the  
414 Authority, the United States Fish and Wildlife Service (USFWS), and National Marine Fisheries  
415 Service (NMFS) to maintain and maximize the anticipated benefits of the Sites Project while  
416 avoiding harm to the CVP. If the reinitiation of consultation on the Sites Project is required, the

417 specific changes contemplated for the Sites Project must meet one of the criteria in accordance  
418 with the Endangered Species Act, Title 50 CFR § 402.16(a) as amended; the Parties will  
419 cooperate in the preparation and negotiation of the reinitiation of consultation and the resulting  
420 revised incidental take statement specific to the Sites Project.

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

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

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

436 **EXCUSED PERFORMANCE**

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

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

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

#### 454 FAILURE OF TIMELY PAYMENT

455  
456 9. Pursuant to WIIN Act § 4007, Reclamation may ~~fund~~contribute up to twenty-five  
457 (25) percent of the Sites Project. Reclamation shall diligently pursue funding —within its  
458 authorities— sufficient to meet its obligations under this Agreement in a timely manner.

459 (a) Fixed Project Costs and Fixed O&M Costs for Completion.

460 (i) Reclamation shall diligently pursue funding —within its  
461 authorities— so as to ensure there are sufficient funds appropriated to cover two years of Fixed  
462 Project Costs, based on costs anticipated to be incurred during the following two (2) year period

463 based on the Spend Plan. If sufficient funds have not been appropriated to cover such costs, then  
464 Reclamation shall develop a plan to pursue funding for Fixed Project Costs sufficient to meet its  
465 obligations in a timely manner and the Parties shall meet and confer to review such plan.

466 (ii) The Parties will work diligently to execute appropriate funding  
467 mechanisms, or amendments thereto, such that funding for Fixed Project Costs shall be made  
468 available to the Authority ~~one (1) year in advance of such Fixed Project Cost being incurred,~~  
469 ~~based on~~ in accordance with the Spend Plan.

470 (iii) The Authority will provide Reclamation with a billing statement  
471 for Reclamation's share of Fixed Project Costs, ~~based on such costs anticipated to be incurred,~~  
472 ~~during the following one (1) year period based on the Spend Plan, which and payment~~ shall be  
473 due within 30 days of issuance of the billing statement.

474 (iv) Upon an unpaid a Fixed Project Cost for ~~Completion-Completion~~  
475 ~~forfeiture of Capacity Interest~~ default by of Reclamation:

476 a. Consistent with Article X [FUNDS TO BE PROVIDED], if  
477 Reclamation has not made sufficient funding available to the Authority within 90 days of  
478 issuance of the billing statement, the Sites Authority shall make written demand upon  
479 Reclamation. The written demand shall identify the portion of Reclamation's Capacity Interest  
480 ~~and Share~~ that is at risk of ~~forfeiture~~ default, being that portion of Reclamation's Capacity  
481 Interest ~~and Share~~ that has not yet been paid, based on the current Spend Plan and in accordance  
482 with this Article (~~"Defaulted Delinquent Payment Interest"~~). If such funding is not made  
483 available to the Authority within an additional 90 days from the date of such demand,  
484 Reclamation is deemed to have not made timely payment and forfeits the additional unpaid  
485 Capacity Interest ~~is in default as it relates to the Defaulted Delinquent Payment Interest.~~

486 b. Upon a ~~forfeiture default of by~~ Reclamation, the Sites  
487 Authority shall use its best efforts to facilitate a sale of Reclamation's applicable ~~Defaulted~~  
488 ~~Interests~~ unpaid Capacity Interest.

489 c. The other non-defaulting Storage Partners holding a  
490 Capacity Interest ~~and Share~~ in the same Project Facilities (the Base Facilities and/or the  
491 Downstream Facilities, as applicable) shall have a "right of first offer" to assume all or a portion  
492 of Reclamation's unpaid Capacity ~~Defaulted~~ Interests and ~~Reclamation's~~ related financial  
493 obligations under this Agreement, at a price mutually agreed between Reclamation and the  
494 Storage Partner purchasing all or a portion of Reclamation's unpaid Capacity ~~Defaulted~~ Interests.  
495 ~~In the event that more than one non-defaulting Storage Partners wish to acquire the Defaulted~~  
496 ~~Interests on the same terms, the Defaulted Interests shall be apportioned pro rata based on the~~  
497 ~~non-defaulting Storage Partner's applicable Capacity Interest and Share in each of the Base~~  
498 ~~Facilities and/or Downstream Facilities unless the non-defaulting Storage Partners agree~~  
499 ~~otherwise.~~

500 d. Subject to Section (iv) below, in the event that the Sites  
501 Authority is unable to facilitate a sale of all of Reclamation's unpaid Capacity ~~Defaulted~~ Interests  
502 to other non-defaulting Storage Partners in accordance with Section (ii) above, the Sites  
503 Authority may make such ~~Defaulted~~ unpaid Capacity Interests available to entities other than the  
504 non-defaulting Storage Partners ~~Participants~~, and may enter into an agreement with such entities  
505 for the purchase of all or a portion of Reclamation's unpaid Capacity ~~Defaulted~~ Interests and the  
506 assumption of the related obligations under this Agreement.

507 e. In the event that the Sites Authority is unable to enter into  
508 an agreement with entities for the purchase of all or a portion of Reclamation's Delinquent

509 ~~Paymentfaulted~~ Interest and the assumption of the related obligations under this Agreement, the  
510 ~~Delinquent Paymentfaulted~~ Interests shall be apportioned pro rata to Participants.

511 f. Notwithstanding that all or any portion of Reclamation's  
512 ~~Delinquent Paymentfaulted~~ Interests is so sold, Reclamation shall remain liable to the Sites  
513 Authority to pay the full amount of its share of costs under this Agreement as if such sale has not  
514 been made, except that such liability shall be discharged to the extent that the Sites Authority  
515 shall receive payment from the buyer thereof for that share of costs.

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

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

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

530 (ii) The Parties will work diligently to execute appropriate funding  
531 mechanisms, or amendments thereto, such that funding for Fixed Project Costs and Fixed O&M

532 Costs shall be made available to the Authority based on such costs anticipated to be incurred,  
533 during the following one (1) year period.

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

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

545 a. Upon a Fixed Project Cost or Fixed O&M Cost

546 ~~delinquency fault of by~~ Reclamation not related to Completion:

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

553 ii. Reclamation shall have no right to utilize Sites  
554 Water in its Capacity Interest ~~and Share~~, no right to otherwise utilize its Capacity Interest ~~and~~

555 ~~Share~~, and agrees to allow other Storage Partners to utilize its Capacity Interest ~~and Share~~ until  
556 its account is no longer ~~delinquent in default~~; and

557 iii. Reclamation's right of first refusal in Article 5 is  
558 suspended until its account is no longer ~~delinquent in default~~.

559 (c) Variable O&M Costs.

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

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

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

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

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

579 i. The Sites Authority shall use its best efforts to

580 facilitate a sale(s) of any or all Sites Water from Reclamation's Capacity Interest ~~and Share~~ to

581 cover the Defaulted Amount, including the reimbursement of the Authority for all reasonable

582 out-of-pocket costs, expenses, disbursements and losses which shall have been paid, incurred or

583 sustained by the Authority in connection with the sale of Sites Water to cover Reclamation's

584 Defaulted Amount;

585 ii. Reclamation shall have no right to utilize Sites

586 Water in its Capacity Interest ~~and Share~~, no right to otherwise utilize its Capacity Interest ~~and~~

587 ~~Share~~, and agrees to allow other Storage Partners to utilize its Capacity Interest ~~and Share~~ until

588 its account is no longer in default; and

589 iii. Reclamation's right of first refusal in Article 5 is

590 suspended until its account is no longer in default.

591 (d) Reclamation's Fixed O&M Costs and Variable O&M Costs shall be

592 determined in accordance with Exhibit [ ].

593

594 (e) Remedies: In addition to the other remedies set forth in Article 10, upon

595 the occurrence of an event of delinquent payment in accordance with this Agreement, any Party

596 shall be entitled to proceed to protect and enforce the rights in a court of competent jurisdiction,

597 consistent with Federal law and without waiving the United States' sovereign immunity from

598 suit.

599

**WIND-UP**

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

605           (a)    Upon adoption of a Wind-Up Resolution by the Authority, the Authority  
606 shall first offer to sell the Project Assets to the Storage Partners (excluding the Partner Facilities ),  
607 at a fair market value as determined by a majority of a panel of 3 licensed appraisers, including (i)  
608 any partially constructed or completed physical works or assets that divert Sites Water into or  
609 release Sites Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests,  
610 or obligations related to the Sites Project. If any Storage Partners accept such offer for any or all  
611 of the offered interests, then the Authority and such purchasing Storage Partners shall work in  
612 good faith to close upon the sale of such interests within 180 days after the appraiser panel’s  
613 determination of fair market value.

614           (b)    Upon adoption of a Wind-Up Resolution by the Authority, the Authority  
615 shall appoint a winding-up agent (the “**Winding-Up Agent**”). The Winding-Up Agent shall, upon  
616 expiration of the time for the Storage Partners to accept the offer described in subsection (b),  
617 prepare a plan for disposition of the Project Assets, which shall include plans for mitigating or  
618 remediating any hazardous or unsafe conditions located on the Sites Project site that are a direct  
619 result of the construction of the Sites Project, and upon approval of the Sites Authority, implement  
620 the disposition of the Project Assets in accordance with the plan for disposition, including the  
621 disposition of unexpended and unobligated funds of the Sites Authority and the Storage Partners.

622 Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable  
623 manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents  
624 then held by the Authority shall first be used, based on the Capacity Interest, to pay the following  
625 amounts in the following order of priority (i) repay debts of the Authority incurred for funding the  
626 Sites Project; provided, however, that any moneys contributed by a self-funding Participant and  
627 held at the time of a winding-up shall not be used to repay debts of the -Authority incurred for  
628 funding the Sites Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe  
629 conditions located on the Sites Project site pursuant to the plan for disposition of the -Project  
630 Assets, and (iii) distribute cash to the Participants that had satisfied their capital funding  
631 obligations . Any remaining funds shall then be distributed to the Storage Partners based on their  
632 proportional respective Capacity Interests. Subject to the Authority Records Management Policy,  
633 Storage Partners shall be entitled to copies of any work products developed by the Authority or its  
634 consultants on behalf of the Storage Partners, and the Authority shall convey to the Storage  
635 Partners, as tenants in common with all other Storage Partners who are not in default under the  
636 Benefits and Obligations Contract, a pro rata interest based on the Capacity Interests in all real  
637 and personal property remaining after implementation of the plan for disposition of the Project  
638 Assets in accordance with this Section.

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

642 (d) Notwithstanding anything to the contrary provided herein, -so long as any  
643 Sites Project obligation under a financing agreement is outstanding (but only to the extent required  
644 under such financing agreement), the termination of the Benefits and Obligations Contract shall

645 be subject to the terms of such financing agreement, including the right of the applicable lender to  
646 consent to such termination, if any.

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

### 649 **DISPUTE RESOLUTION**

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

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

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

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

673 **OPINIONS AND DETERMINATIONS**

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

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

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

693 **WATER MEASUREMENT**

694 13. The Sites Authority is responsible for the measurement of all Sites Water pursuant  
695 to this Agreement at the point(s) of delivery or point(s) of diversion established pursuant to  
696 Exhibit D.

697 (a) Prior to Completion, the Authority shall ensure that the water measuring  
698 devices are installed and operating properly. The Authority will be responsible for installing,  
699 operating, maintaining, and repairing all such measurement devices. The equipment and methods  
700 used to make such measurement shall be in accordance with Good Industry Practices. Upon  
701 request of the Contracting Officer, the accuracy of such measurements will be investigated by  
702 the Sites Authority and any errors appearing therein will be corrected.

703 **SEVERABILITY**

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

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**HOLD HARMLESS**

15. (a) The 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, or the design, operation, or maintenance of the Sites Project, provided the claims, damages, losses, liabilities, or expenses are not the result of any willful or negligent acts or omissions on the part of the United States. 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 section 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.). The Authority will not assert that Reclamation, its Director, officers, agents or employees, are liable for damages of any nature whatsoever arising out of any actions or omissions by the Authority, its directors, officers, agents or employees, related to the Authority's performance of this Agreement, where such liability is caused by an act, error or omission of the Authority, its director, officers, agents or employees.

(b) Reclamation shall defend, and hold harmless the Sites Authority, its officers, agents, and employees from and against any and all claims, damages, losses, liabilities, and expenses arising out of or resulting from the Unites States' control, carriage, handling, use, disposal, or distribution of Sites Water beyond the Delivery Point [up to \$XXXXXXXX amount], except for any damage or claim 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

734 resulting from a malfunction of a Sites Project Facility. Nothing herein shall be deemed to  
735 increase the liability of Reclamation beyond the provisions of the Federal Tort Claims Act (28  
736 U.S.C. 2671, et seq.). This section is subject to available appropriations and shall not be  
737 construed as to allow for violation of the Anti-Deficiency Act (31 U.S.C. 1341, et seq.).

738 **NOTICES**

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

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

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

750 **OFFICIALS NOT TO BENEFIT**

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

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

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

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

760

**BOOKS, RECORDS, AND REPORTS**

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

771

**COMPLIANCE WITH LAWS**

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

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

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

785

**COMPLIANCE WITH CIVIL RIGHTS**

786           22.     (a)     The Authority shall comply with Title VI of the Civil Rights Act of 1964  
787 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
788 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
789 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.

790 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
791 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
792 Interior and/or Bureau of Reclamation.

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

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

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

810

811

**FUNDS TO BE PROVIDED**

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

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

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

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

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

840 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

849

850

**AGREEMENT DRAFTING CONSIDERATIONS**

851 25. This Agreement has been negotiated and reviewed by the parties hereto, each of  
852 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced  
853 Articles of this Agreement have been drafted, negotiated, and reviewed by the parties, and no  
854 one party shall be considered to have drafted the stated articles. Single-spaced articles are  
855 standard articles pursuant to Reclamation policy.

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

858 (SEAL)

THE UNITED STATES OF AMERICA

859  
860  
861  
862

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

863

SITES AUTHORITY

864  
865  
866

Attest:

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

867

\_\_\_\_\_