

THIRD AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT

BY AND AMONG

SITES PROJECT AUTHORITY

and

THE PROJECT AGREEMENT MEMBERS LISTED HEREIN

Dated as of January 1, 2022

THIS THIRD AMENDMENT TO 2019 RESERVOIR PROJECT AGREEMENT (this “Third Amendment”), dated as of January 1, 2022, by and among SITES PROJECT AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “Authority”), and the project agreement members listed in the Agreement referenced below (the “Project Agreement Members”) and amends that certain 2019 Reservoir Project Agreement dated as of April 1, 2019 (the “Original Agreement”), as previously amended by the First Amendment to 2019 Reservoir Project Agreement dated as of January 1, 2020 (the “First Amendment”) and by the Second Amendment to 2019 Reservoir Project Agreement dated as of July 1, 2020 (the “Second Amendment” and, together with the Original Agreement and the First Amendment, the “Agreement”), each by and among the Authority and the Project Agreement Members;

WITNESSETH:

WHEREAS, Authority and the Project Agreement Members have determined to approve an Amendment 3 Work Plan and to extend the term of the Agreement to December 31, 2024; and

WHEREAS, under Section 11 of the Agreement, the Agreement may be amended by a writing executed by the Authority and at least 75% of the total weighted vote of the then current Committee members as provided in Subsection 3(g); and

WHEREAS, except as provided below in Section 2.07 below, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and the entering into of this Third Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Third Amendment;

NOW, THEREFORE, THIS THIRD AMENDMENT WITNESSETH, the Authority and the Project Agreement Members agree, as follows:

ARTICLE I

DEFINITIONS

Section 1.01. **Definitions.** All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

ARTICLE II

AMENDMENTS TO AGREEMENT

Section 2.01. **Project Agreement Members.**

(a) Effective January 1, 2022, Exhibit A to the Agreement titled “Project Agreement Members” shall be removed and replaced with Exhibit A to this Third Amendment titled “Project Agreement Members.”

Section 2.02. **Work Plan.**

(a) Effective January 1, 2022, the Amendment 2 Work Plan attached as Exhibit B to the Second Agreement shall be supplemented by the Work Plan attached hereto as Exhibit B (the “Amendment 3 Work Plan”).

Section 2.03. **Funding.**

The Agreement is hereby amended to remove Section 4(a) in its entirety and replace it with the following:

“(a) **Budget.** The Committee shall, in cooperation with the Authority’s Board, provide and approve both a Fiscal Year operating budget and reestablish a Phase 2 budget target, annually or more frequently as needed. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums reflected in the Amendment 3 Work Plan in accordance with Section 5 of this Project Agreement. The contribution with respect to the pro-rata budgeted sums reflected in the Amendment 3 Work Plan shall be payable by each Project Agreement Member in two installments. The first installment shall be in an amount equal to \$100 per acre-foot and shall be payable by no later than May 1, 2022. The second installment shall be in an amount equal to up to \$140 per acre-foot and shall be payable by no later than January 1, 2023. The third installment shall be in an amount equal to up to \$160 per acre-foot and shall be payable by no later than January 1, 2024. The obligation of the Project Agreement Members to make the second installment and third installment shall be conditioned upon the Authority and the Committee reapproving the Amendment 3 Work Plan or approving an amendment thereto by (i) an affirmative vote of at least 75% of the total number of Directors of the Authority Board and (ii) an affirmative vote of at least 75% of the total weighted vote as provided at Subsection 3(g) of the then-current Committee members, prior to January 1, 2023 or January 1, 2024, as applicable.”

Section 2.04. **Future Development of the Proposed Sites Reservoir Project.**

The Agreement is hereby amended to add the below Sections 6(c), 6(d) and 6(e):

“(c) On or prior to March 31, 2022, each Project Agreement Member shall provide the Authority with a completed Project Agreement Member Project Payment Annex in the form attached hereto as Exhibit C. The Project Agreement Members, upon written request of the Authority, will meet with Authority staff from time to time, but not more often than once per calendar quarter, at which meeting, Authority staff will provide such Project Agreement Members with information regarding the then-current financing options being considered by the Authority and the expected terms of such financing options and the Project Agreement Member will provide updates regarding the status of the items identified in the Project Agreement Member Project Payment Annex.

(d) On or prior to June 30, 2023, each Project Agreement Member shall provide the Authority with a written update (the “Project Agreement Member Update”) with respect to the progress in the implementation of such repayment option, the remaining actions to be taken and the estimated completion dates.

For those Project Agreement Members that identified special benefit assessments or land based charges imposed in an improvement district as a source of repayment for an Authority financing in its Project Agreement Member Payment Annex, the Project Agreement Member Update

will also include a confirmation that such Project Agreement Member has the legal or contractual authority to discontinue water service to a water user that is delinquent in the payment of such special benefit assessment or land based charge, as applicable.

The Project Agreement Member Update will also include a confirmation that the Project Agreement Member has adopted a debt management policy that is compliant with California Government Code Section 8555(i), or, if such Project Agreement Member has not adopted such a debt management policy, the Project Agreement Member Update will include a statement that such Project Agreement Member expects to adopt such a debt management policy [or an opinion from the general counsel to such Project Agreement Member to the effect that such a debt management policy is not required to be adopted by the Project Agreement Member to finance its share of the Project].

The Project Agreement Member Update shall also identify any change in the proposed source of repayment from the source identified in the Project Agreement Member Payment Annex previously submitted to the Authority.

(e) The Project Agreement Members that identified the repayment options of either special benefit assessments or land based charges imposed in an improvement district in their respective Project Agreement Member Payment Annexes agree to use best efforts complete the necessary procedures to comply with the applicable requirements of Proposition 218 by no later than June 30, 2023.”

Section 2.05. **Term.** The Agreement is hereby amended to remove Section 8(b) in its entirety and replace it with the following:

“(b) The term of this Project Agreement shall continue until December 31, 2024. In the event that this Third Amendment is not approved by Project Agreement Members with the requisite percentage of the total weighted vote as set forth in the Agreement by March 31, 2022, the Agreement shall be revived immediately upon approval by such requisite percentage, without any additional approval of the Project Agreement Members, and this Third Amendment shall become effective.”

Section 2.06. **Admission of New Project Agreement Members.** The Agreement is hereby amended to add the following sentence to end of the paragraph included under Section 10 of the Agreement:

“The Authority shall have the right to charge Project Agreement Members executing the Agreement after a date determined by the Board a fee, which such fee shall be established by the Board, to compensate Project Agreement Members who executed the Agreement prior to a date determined by the Board, for providing funding for the initial phases of the Project.”

Section 2.07. **California Environmental Quality Act.** The Agreement is hereby amended to add the following Section 18:

“Section 18 **California Environmental Quality Act**

Notwithstanding any provision of this Agreement, the Authority and the Project Agreement Members fully reserve all of their respective rights, powers, authority and discretion with respect to the proposed Project pursuant to the agencies’ respective obligations and responsibilities under the

California Environmental Quality Act (“CEQA”). This includes: (A) the power and discretion of the Authority as the lead agency, upon the completion of its CEQA review, to adopt feasible mitigation measures or a feasible project alternative, to approve the proposed Project based on the requisite CEQA findings, or to disapprove the proposed Project; and (B) the powers and discretion of the Project Agreement Members concerning the specific matters within their respective jurisdiction and authority acting as responsible agencies under CEQA. Any future decisions on whether to issue an approval of the proposed Project, and if so, how to issue such approval, will not be made until the agency making the decision has first completed its CEQA review of the proposed Project.”

ARTICLE III

MISCELLANEOUS

Section 3.01. **Effectiveness of Agreement.** Except as expressly amended by this Third Amendment, the Agreement is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof. The amendments set forth in this Third Amendment shall be incorporated as part of the Agreement upon their effectiveness in accordance with Section 11 of the Agreement.

Section 3.02. **Execution in Several Counterparts.** This Third Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Project Agreement Members shall preserve undestroyed, shall together constitute but one and the same instrument.

Section 3.03. **Laws Governing Third Amendment.** The effect and meaning of this Third Amendment and the rights of all parties hereunder shall be governed by, and construed according to, the laws of the State.

IN WITNESS WHEREOF, the Authority and Project Agreement Members hereto, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers on the date shown below:

Dated: _____

SITES PROJECT AUTHORITY

By: _____

Name:

Title:

[PROJECT AGREEMENT MEMBER]

Dated: _____

(Authority & Project Agreement Member)

By: _____

Name:

Title:

DRAFT

EXHIBIT A

PROJECT AGREEMENT MEMBERS

Participant	Participation (Third Amendment Annualized Acre-Foot)		Storage Allocation
	Preliminary	Percent	
American Canyon, City of	4,000	2.4%	
Antelope Valley-East Kern Water Agency	500	0.3	
Carter Mutual Water Company #	300	0.2	
Coachella Valley Water District	10,000	6.0	
Colusa County	10,000	6.0	
Colusa County Water District	10,073	6.0	
Cortina Water District	450	0.3	
Davis Water District	2,000	1.2	
Desert Water Agency	6,500	3.9	
Dunnigan Water District	2,972	1.8	
Glenn-Colusa Irrigation District	5,000	3.0	
Irvine Ranch Water District	1,000	0.6	
LaGrande Water District	1,000	0.6	
Metropolitan Water District of S. CA	50,000	29.8	
Reclamation District 108	4,000	2.4	
Rosedale-Rio Bravo Water Storage District	500	0.3	
San Bernardino Valley Municipal Water District	21,400	12.8	
San Geronio Pass Water Agency	14,000	8.4	
Santa Clara Valley Water District	500	0.3	
Santa Clarita Valley Water Agency	5,000	3.0	
Westside Water District	5,375	3.2	
Wheeler Ridge-Maricopa Water Storage District	3,050	1.8	
Zone 7 Water Agency	10,000	6.0	
Total:	167,620	100.0	

Participation Percentages exclude State of California and United States Bureau of Reclamation share of the Project.

Denotes a non-public agency. Refer to California Corporations Code Section 14300 et. seq. with additional requirements provided in both the Public Utilities Code and Water Code.

EXHIBIT B
AMENDMENT 3 WORK PLAN

DRAFT

EXHIBIT C

FORM OF PROJECT AGREEMENT MEMBER
PROJECT PAYMENT ANNEX

Project Agreement Member:

Date:

<p>Expected Source(s) of Repayment For Authority Financing (Check Each Box That Applies):</p>	<p><input type="checkbox"/> Amounts Collected Through Department of Water Resources State Water Project Annual Statement of Charges</p>	<p><input type="checkbox"/> Water Rates and Charges (Proposition 218 Compliance Required)</p>	<p><input type="checkbox"/> Water Rates and Charges (Proposition 218 Compliance Not Required)</p>	<p><input type="checkbox"/> Special Benefit Assessment-Districtwide</p>	<p><input type="checkbox"/> Land-Based Charges Imposed Within an Improvement District</p>
<p>If An Improvement District, Has It Been Formed?</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>	<p>If no, is it anticipated to be formed by June 30, 2023?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>If A Special Benefit Assessment, Has the Special Benefit Been Approved In An Amount To Pay Debt Service On The Authority Financing?</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>	<p>If no, is it anticipated to be presented for landowner approval by June 30, 2023?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>Does the District Have A Debt Management Policy Compliant With Section 8855(i) of the California Government Code?</p>	<p><input type="checkbox"/> Yes</p>	<p><input type="checkbox"/> No</p>			