



Requested Action:

Reservoir Committee and Authority Board consider approval and authorize the Executive Director to execute a Cooperative Agreement between the Sites Project Authority and Reclamation District No. 108 regarding the use of existing Partner Facilities and development and operation of new infrastructure.

Detailed Description/Background:

Delivering the benefits of the Sites Reservoir Project in and south of the delta includes the planned utilization of existing conveyance facilities (collectively defined as the Lower CBD System) including the:

- Colusa Basin Drain South of Balsdon Weir (CBD): A drainage canal owned by individual underlying landowners including Reclamation District No. 108 (RD108) and other entities and no operating and maintaining agency.
- Knights Landing Ridge Cut: A drainage canal owned by individual underlying landowners including the Knights Landing Ridgecut Drainage District (a sister agency with RD108) and other entities maintained for flood control purposes.
- Knights Landing Outfall Gates: A gated outfall structure from the CBD to the Sacramento River owned and operated by the California Department of Water Resources (DWR) Flood Operations in conjunction with the Wallace Weir.
- Wallace Weir: A gated outfall structure from the Knights Landing Ridge Cut to the Yolo Bypass owned by DWR and operated by RD108.

To provide support with the integration of the Sites Reservoir Project construction and operation into the Lower CBD System, Staff is proposing to contract with RD108 for support and assistance on a number of activities including planning, design, permitting, construction of the new infrastructure and facility improvements, and coordinating integration into existing facilities. The institutional structure surrounding the Lower CBD System is complex and Staff feels that using the services of RD108 staff to help navigate through these complexities and assist with local communications is the best approach to achieving the desired outcomes for the Project. RD108's service area overlays much of the area affected and they currently act in many ways to coordinate and integrate new activities into the Lower CBD system. RD108 is uniquely qualified to provide these vital services to the Project.

In addition, the use of RD108 owned facilities will require Facilities Use Agreement(s) and any required improvements will require Facility Partner Design and Construction Agreement(s). In this capacity, RD108 would be a Facility Partner in the same way as TCCA and GCID.

The Sites Project Authority and RD 108 (together the “Parties”) have developed a Cooperative Agreement (Attachment A) regarding the assistance services and the future use of Partner Facilities (the “Cooperative Agreement”) and outlining the process to reach final agreement regarding such shared use. The proposed Cooperative Agreement is identical to the Cooperative Agreements that have been executed with TCCA and GCID with changes made only to reflect unique ownership considerations on the Lower CBD System. The Cooperative Agreement has the following key terms:

- Clarifies the roles and responsibilities of the Parties.
- Allows for reimbursement of eligible planning costs to Facility Partners.
- Defines development of a workplan with the required scope, schedule, and resources to develop Facilities Use Agreements and Facility Partner Design and Construction Agreements.
- RD108 was not specifically included in the JPA agreement section 2.5, which affords certain rights to TCCA and GCID. Language has been drafted in the Cooperative Agreement to extend these rights to RD108, covered in sections 2.1.3 and 3.1.2 in the Cooperative Agreement. If approved, these provisions would be carried forward into the JPA amendments being prepared for Phase 3/4/5.

The Cooperative Agreement builds on the long history of collaboration between the Parties, recognizes the contributions of RD 108 to the planning development of the Sites Reservoir Project, and provides a path forward to developing the agreements required to deliver project benefits throughout the life of the Project.

Prior Action: None.

Fiscal Impact/Funding Source:

There are sufficient funds in the A3 work plan to pay the costs anticipated under this Cooperative Agreement, estimated to be below \$50,000. It is expected that the expenditure of funds will occur beginning August 1, 2023, and run through the end of the Amendment 3 Work Plan, currently Dec 31, 2024. Task budgets will be developed in the Cooperative Agreement Workplans in Q4, 2023 and the funds for this task will be reallocated from unrestricted contingency.

Staff Contact: JP Robinette

Primary Service Provider: Brown and Caldwell/HDR

Attachment: Attachment A: RD108 Cooperative Agreement

Cooperative Agreement

Between

Sites Authority, and

Reclamation District No. 108



Regarding Use of Partner Facilities

Dated as of _____, 2023

Cooperative Agreement Between Reclamation District 108 and the Sites Authority Regarding Use of Partner Facilities For the Sites Reservoir Project

This Cooperative Agreement (this “**Agreement**”) is entered into and effective from _____, 2023, between Reclamation District No. 108 (“**RD 108**”) and the Sites Project Joint Powers Authority (“**Sites Authority**”), regarding planning efforts for the use of existing conveyance features and development and operation of new infrastructure for a climate-resilient, 21st century water storage system to responsibly manage and deliver water, improve the environment, and provide flood control and recreation benefits (“**Sites Reservoir Project**”). Each of the parties to this Agreement is referred to in this Agreement as a “Party” and the parties are collectively referred to in this Agreement as the “Parties.”

RECITALS

- A. The Sites Authority is a California Joint Powers Authority operating under and by virtue of Section 6500 et seq., of the California Government Code and formed pursuant to the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be amended and restated from time to time, and pursuant to which the formation of the Sites Reservoir Committee was authorized (“**JPA Agreement**”). The Sites Authority was formed in 2010 by its member agencies, all of whom are public agencies within the Sacramento River Watershed, for the following purpose: To design, permit, finance, construct, and ultimately own and operate the Sites Reservoir Project, a proposed 1.3-1.5 million acre-foot off-stream reservoir located approximately 10 miles west of the town of Maxwell, California. Once constructed, the Sites Reservoir Project will provide water storage and supply for the entities that pay to participate and receive benefits, including certain Sites Authority members and other municipal entities and special districts (collectively, “**Participants**”). The Sites Reservoir Project will also provide public benefits including environmental water supply, recreation, and regional flood control benefits.
- B. RD 108 is a California reclamation district located along the western edge of the Sacramento River which delivers water to nearly 48,000 acres of farmland within southern Colusa County and northern Yolo County. RD 108 receives water from the Sacramento River under riparian water rights, licenses for appropriation of surface water, and a settlement contract with the US Bureau of Reclamation. RD 108 was a founding member of the Sites Authority and has served in a leadership capacity on the Authority Board.
- C. The Sites Reservoir Project includes development and operation of new infrastructure including necessary dams, pipelines, pump stations, power transmission lines, and other facilities to provide new water supply and storage.
- E. The operation of the Sites Reservoir Project will also significantly rely on utilization of existing conveyance facilities including the Colusa Basin Drain, Knights Landing Ridge Cut, and Knights Landing Outfall Gates, and Wallace Weir and such other facilities identified during the Planning Period (as defined in Section 4) to convey water to the Sacramento River for release. These facilities are collectively referred to in this Agreement as “**Partner Facilities**.”

- F. The Sites Authority intends to adopt a resolution 2023-01 “Commitments of the Sites Project Authority with regard to Sites Reservoir Project use of Lower Colusa Basin Drain System” in September 2023. The Sites Authority intends to partner with RD 108 to uphold these commitments.
- G. Much of the new infrastructure associated with the construction and operation of the Sites Reservoir Project will be constructed, owned and operated by the Sites Authority. For example, the dams, the pump station at Funks Reservoir, power transmission lines, and the Dunnigan Pipeline. However, some of the new infrastructure and/or improvements are anticipated to be operated, and in some cases potentially even constructed by RD 108.
- H. In order to construct and operate the Sites Reservoir Project, the Sites Authority will need the assistance, permission, and cooperation of RD 108 on a number of activities including cooperation, planning, design, permitting, construction of the new infrastructure and facility improvements, and integration of the Partner Facilities. Moreover, the Sites Authority and RD 108 (or other appropriate parties determined during the Planning Period (as defined in Section 4) ultimately desire to negotiate and enter into separate agreements establishing the cost share, operations and maintenance responsibilities, operational rules and requirements, level of service, conveyance costs and other key terms and parameters for the use of each of the Partner Facilities by the Sites Reservoir Project (“**Facilities Use Agreements**”) and separate agreements defining cost share, roles and responsibilities, and other key terms related to the permitting, design and construction of improvements to each of the Partner Facilities which will be relied upon by the Sites Authority (each a “**Partner Facility Design and Construction Agreement**”) with respect to the ultimate details related to the construction and operation of the Sites Reservoir Project.
- I. The Parties collectively wish to further the effort described above, with the mission of ultimately constructing and operating the Sites Reservoir Project and recognize that such effort will require a significant commitment of time and resources for the purpose of furthering the Sites Reservoir Project.
- J. The Parties wish to enter into this Agreement to identify the activities necessary to further the Sites Reservoir Project, and to provide for the protocols and procedures for payment and/or reimbursement by the Sites Authority to RD 108 for its efforts and expenses in furtherance of the requested actions to be undertaken for the benefit of the Sites Reservoir Project between the time of execution of this Agreement and the anticipated execution of the Facilities Use Agreement and Partner Facility Design and Construction Agreement.

In consideration of the above Recitals and of the mutual promises and agreements contained in this Agreement, the Parties agree as follows:

SECTION 1. OVERVIEW AND ROLES AND RESPONSIBILITIES OF PARTIES

1.1 OVERVIEW

1.1.1 The Parties share the objective of developing a mutual regional partnership to provide affordable water sustainably managed for environmental, agricultural and municipal uses in California, and to increase Sacramento Valley’s water storage capacity.

1.1.2 The Parties agree that use of the Partner Facilities is critical to divert water from the Sacramento River for storage in the Sites Reservoir and for releases as part of the Sites Reservoir Project.

1.1.3 This Agreement describes the framework for the conceptual and preliminary permitting and planning with respect to the use of the Partner Facilities for the Sites Reservoir Project, through collaborative efforts of the Parties as further described in Section 4.

1.2 ROLES AND RESPONSIBILITIES

1.2.1 Sites Authority Roles and Responsibilities.

The Sites Authority shall:

- (a) Designate an authorized lead negotiator for purposes of negotiating the Facilities Use Agreement and Partner Facility Design and Construction Agreement with RD 108, provided that any decisions made by the lead negotiator remain subject to approval by the Sites Authority's governing board;
- (b) Coordinate and cooperate with RD 108 in order to fulfill the purposes of this Agreement;
- (c) Facilitate and attend meetings with RD 108;
- (d) Provide administrative support to RD 108 as it relates to the Sites Reservoir Project, including use of the Sites Authority's meeting facilities; and
- (e) Compensate RD 108 for Planning Activities as provided in Section 5.

1.2.2 RD 108 Roles and Responsibilities.

RD 108 shall:

- (a) Designate an authorized lead negotiator for purposes of negotiating the Facilities Use Agreement and Partner Facility Design and Construction Agreement with the Sites Authority, provided that any decisions made by the lead negotiator remain subject to approval by RD 108's governing board;
- (b) Coordinate and cooperate with the Sites Authority in order to fulfill the purposes of this Agreement;
- (c) Facilitate and attend meetings with the Sites Authority and the other Participants; and
- (d) Provide administrative support to the Sites Authority and other Participants as it relates to the Sites Reservoir Project, including providing use of their meeting facilities.

1.2.3 Cooperative Agreement Workplan.

- (a) Following execution of this Agreement, the Parties agree to work collaboratively to develop a detailed work plan (including milestones, budget and identified resources) (the “**Cooperative Agreement Workplan**”) that documents the proposed Planning Activities necessary prior to negotiating the Facilities Use Agreement and the Partner Facility Design and Construction Agreements.
- (b) The Cooperative Agreement Workplan will be continuously monitored by the Parties and may be revised as necessary to include additional activities, milestones, budget and identified resources, subject to approval by each of the Parties, during the Term of this Agreement.

SECTION 2. ENVIRONMENTAL APPROVALS AND COMPLIANCE

2.1.1 The Sites Reservoir Project requires certain public agency approvals and thus environmental review under California Environmental Quality Act (“**CEQA**”) and National Environmental Policy Act (“**NEPA**”). The Sites Authority is the lead agency under CEQA, and the US Bureau of Reclamation is serving as the federal lead agency under NEPA. RD 108 may be a responsible agency under CEQA with respect to the Sites Reservoir Project.

2.1.2 By entering into this Agreement, no party is committing itself to any definite course of action for the Sites Reservoir Project. Each Party hereby reserves all of its rights, powers, responsibilities, obligations, and discretion under CEQA with respect to the environmental review and decision-making for the Sites Reservoir Project. This includes the authority, as applicable for each Party to this Agreement given its specific statutory and regulatory powers and jurisdiction, (i) to adopt mitigation measures and/or a Sites Reservoir Project alternative in order to reduce any significant environmental impacts as identified in the Environmental Impact Report certified by the Sites Authority for the Sites Reservoir Project; (ii) to disapprove the Sites Reservoir Project (or a component thereof) based on any significant impacts that cannot be mitigated; (iii) to approve the Sites Reservoir Project (or component thereof) notwithstanding any significant environmental impacts that cannot be mitigated, if it is determined that these impacts are outweighed by the Sites Reservoir Project’s social, economic, environmental or other benefits; and (iv) to conduct additional CEQA review. To the extent applicable, the Parties similarly reserve all of their rights, powers, responsibilities, obligations and discretion under NEPA with respect to environmental review and decision making for the Sites Reservoir Project.

2.1.3 If, following the effective date of this Agreement, the Sites Authority is required to submit, circulate, publish, or approve any permit applications or environmental compliance (or similar) documents that implicate RD 108, then prior to the Sites Authority submitting, circulating, publishing, or approving such permit applications or environmental compliance (or similar) documents, the Sites Authority will provide RD 108 the opportunity to review, propose edits, and have final approval prior to the Sites Authority proceeding forward with such an effort in accordance with Section 3.1.2.

2.1.4 Neither the Sites Authority, nor RD 108, shall have any right, authority or obligation under this Agreement to perform, and shall not perform, any activities or services under this Agreement that could cause effects to the physical environment until all applicable laws and regulations, including CEQA and NEPA requirements, as applicable, have first been satisfied.

SECTION 3. NEW FACILITIES AND PARTNER FACILITIES

3.1 NEW FACILITIES

3.1.1 The Sites Authority intends to develop new physical infrastructure and capital improvements for the Sites Reservoir Project to be designed, constructed, commissioned, completed, and owned by the Sites Authority, including dams, reservoirs, pipelines, pump stations, power transmission lines, and other facilities needed to provide new water supply and storage (“**New Facilities**”).

3.1.2 The Parties anticipate that the Sites Reservoir Project will be within or adjacent to RD 108’s district with at least a portion of the conveyance of water out of Sites Reservoir to be accomplished by wheeling water through RD 108 Partner Facilities. The Sites Authority shall not have the power, except with the express written consent of RD 108, to enter into any agreements or otherwise take any action that will, directly or indirectly, decrease, restrict, or in any manner alter, modify or limit water rights, water supplies or contractual entitlements to water of RD 108 or the operations of its facilities or any facilities it operates under contract. All activities of the Sites Authority associated with the Sites Reservoir, including New Facilities, are subject to this Section 3.1.2.

3.1.3 Subject to Section 3.1.2, all decisions with respect to the planning, design, construction, operation, permitting, regulatory compliance, and maintenance of the New Facilities that are to be owned and operated by the Sites Authority shall rest with the Sites Authority, provided, however, that the Sites Authority will consult with RD 108 as provided in this Agreement.

3.2 PARTNER FACILITIES

3.2.1 The Parties agree that the status and details related to the construction, responsibilities, costs, and operations related to RD 108 Partner Facilities and/or improvements will be further delineated and determined during the Planning Period (as defined in Section 4) and, if agreed upon, incorporated into any applicable Facilities Use Agreement and Partner Facility Design and Construction Agreement.

SECTION 4. RD 108 AND SITES AUTHORITY PLANNING ACTIVITIES

4.1.1 During the period commencing August 1, 2023 and ending on execution of the Facilities Use Agreement(s) and Partner Facility Design and Construction Agreements (“**Planning Period**”), Sites Authority intends to:

- (a) Undertake environmental, geotechnical, and engineering investigations of the anticipated Sites Reservoir Project site to determine Sites Reservoir Project feasibility and suitability of the site for the intended uses and to provide a basis for the Sites Reservoir Project conceptual design at a level of detail to comply with CEQA (and NEPA, as applicable);
- (b) Obtain governmental approvals and permits applicable to the Sites Reservoir Project, including those described below; and

- (c) Complete project planning and perform preliminary design at a level of detail to comply with CEQA (and NEPA, as applicable), and, subject to the completion of state and federal environmental review, develop and manage the master implementation schedule for the Sites Reservoir Project.

4.1.2 During the Planning Period, RD 108 intends to undertake reasonable preliminary due diligence and analysis directly relating to the following (referred to in this Agreement as **“Planning Activities”**):

- (a) The use of the Partner Facilities for the Sites Reservoir Project including third party surveys, studies, reports, permitting analysis, and financial analysis necessary to develop any Facilities Use Agreements and Partner Facility Design and Construction Agreements;
- (b) Cooperation and coordination with local interests and entities with respect to roles regarding planning, design, construction, operations and maintenance of the Partner Facilities;
- (c) Capital improvements required for the use of the Partner Facilities for the Sites Reservoir Project including analysis of cost, schedule, and funding options necessary to develop the Partner Facility Design and Construction Agreements and the appropriate parties to perform such functions; and
- (d) Operations and maintenance required for the Partner Facilities for the Sites Reservoir Project and the appropriate parties to perform such functions.

4.1.3 During the Planning Period, the Parties intend to strive to negotiate the terms of each Facilities Use Agreement between each Party and the Sites Authority providing for the use of the Partner Facilities by the Sites Authority for the Sites Reservoir Project on terms acceptable to all Parties.

4.1.4 If, following the Planning Period, the Parties agree that the Sites Reservoir Project’s use of the Partner Facilities is feasible and cost effective from the perspective of each Party, the Parties will execute the Facilities Use Agreements and the Partner Facility Design and Construction Agreements in accordance with the terms negotiated under Section 4.1.3, conditioned upon environmental review under CEQA and/or NEPA and the Participants’ approval of the Project in accordance with the Governance principles, as appropriate.

SECTION 5. PLANNING EXPENSES

5.1.1 Sites Authority shall reimburse RD 108 for 100% of the Planning Expenses (as defined in Section 5.1.2) related specifically to their respective efforts described in this Agreement in furtherance of permitting, construction, operation, and integration efforts related to the involvement of Partner Facilities in the Sites Reservoir Project, provided the sum of the amounts invoiced are consistent with and shall not exceed the maximum payment amounts agreed in the Cooperative Agreement Workplan.

5.1.2 “Planning Expenses” include the following expenses incurred by RD 108 (**“Planning Expenses”**):

- (a) Payroll costs for staff in the direct employ of RD 108 including salaries and wages, under schedules of job classifications agreed upon by Sites Authority and RD 108 in advance of such performance, plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto incurred in the performance of the Planning Activities;
- (b) Consultant and legal costs for services specifically related to the Planning Activities;
- (c) General administrative costs and supplemental costs, including the proportion of necessary transportation, travel, and subsistence expenses of RD 108's employees incurred in discharge of duties connected with the Planning Activities; and
- (d) Other costs incurred in the performance of the Planning Activities to the extent approved in writing by Sites Authority.

Planning Expenses shall not include:

- (a) Overhead, mark-up or other general expense costs of any kind, not specifically and expressly included in paragraphs (a) through (d) above;
- (b) Any costs related to RD 108's general involvement in the Sites Reservoir Project as a member of the Sites Authority, member of the Reservoir Committee, or as an investor in the Sites Reservoir Project, including payroll costs and other compensation of RD 108's officers, executives, general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by RD 108 whether at the site or in RD 108's office for general administration of the Planning Activities and not included in the schedule of job classifications agreed by the Sites Authority; and
- (c) Expenses of RD 108's principal and branch offices.

5.1.3 Prior to incurring any Planning Expenses pursuant to this Agreement, Sites Authority and RD 108 shall agree on reasonable methods for recording Planning Expenses (including, for example, staff and management timekeeping policies and procedures).

5.1.4 RD 108 shall ensure that staff labor costs and task descriptions are recorded in reasonable detail and records kept in accordance with their records retention policies, or for any longer period required by law (including the Sites Authority's Records Management Policy), or outside funding sources.

5.1.5 RD 108 shall submit to the Sites Authority an invoice on account of all amounts then payable by Sites Authority to RD 108 on a monthly basis, no later than the tenth day following the last day of the month being invoiced, unless some other period is agreed to by the Parties in writing, until the expiration of this Agreement.

5.1.6 Each invoice shall include any supporting documentation reasonably necessary to enable the Sites Authority to fully and accurately determine (without needing to refer to any other documentation or information) the amounts payable by Sites Authority to RD 108 under this Agreement, including any such documentation or information, which the Sites Authority may by written notice from time to time require RD 108 to set out or attach, whether in relation to a specific invoice or all invoices generally.

5.1.7 Within 30 days after Sites Authority's receipt of a complete invoice that satisfies all the requirements set forth above, Sites Authority shall approve and pay said invoice or dispute all or a portion of such invoice. Sites Authority shall provide RD 108 the reason(s) for any disputed portions of such invoice and withhold the disputed amount, while remitting timely payment for the undisputed portions of the subject invoice. The terms and conditions of Section 7 shall apply to any such dispute.

SECTION 6. TERM; TERMINATION

6.1.1 Term: This Agreement shall be effective upon the last date of execution by the Parties and remain in effect until the Parties enter into Facilities Use Agreements and the Partner Facility Design and Construction Agreements, unless this Agreement is terminated earlier in accordance with Section 6.1.2 below.

6.1.2 Termination. Any Party may terminate this agreement upon 30 days' notice to the other Parties; provided that Sites Authority shall remain obligated to pay invoices for Planning Expenses incurred up to the date of termination. Moreover, the duty of indemnification on behalf of the Sites Authority will survive termination of this Agreement.

SECTION 7. DISPUTE RESOLUTION

7.1.1 Informal Dispute Resolution. If a dispute arises among the Parties relating to or arising from a Party's obligations under this Agreement, then the Parties will first attempt to resolve their dispute informally, in a timely and cost-effective manner by appointing a knowledgeable, responsible representative to hold meetings and negotiate with the other Parties' representatives to resolve any such dispute. If the chosen representatives fail to resolve the dispute, senior management for each Party shall meet together to negotiate to resolve the dispute.

7.1.2 Reserved Rights. If the Parties are unable to resolve the dispute through informal dispute resolution, each Party reserves any and all rights and remedies available to it under the Agreement or at law or in equity or otherwise.

7.1.3 Attorney's fees. In the event of any dispute that is unresolved pursuant to Section 7.1.1 of this Agreement, the Party prevailing in such dispute shall be entitled to collect from the other Party all costs incurred in such dispute, including reasonable attorneys' fees.

SECTION 8. INDEMNIFICATION; CONSEQUENTIAL LOSS

8.1 INDEMNIFICATION

8.1.1 The Sites Authority (the "**Indemnifying Party**") shall take full responsibility for any and all liability, loss, injury, damages, expenses, costs, fines (regulatory or otherwise) (including costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to efforts undertaken pursuant to or in furtherance of any activities prescribed in this agreement.

Moreover, the Sites Authority shall indemnify, defend and hold harmless RD 108 and its respective officials, directors, officers, employees, contractors, consultants, agents and assigns (the **"Indemnified Parties"**) from and against any and all liability, loss, injury, damages, expenses, costs, fines (regulatory or otherwise) (including costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to efforts undertaken pursuant to or in furtherance of any activities prescribed in this Agreement by either the Indemnified Parties and/or the Sites Authority, or its respective officials, directors, officers, employees, contractors, consultants, agents and assigns. Provided, however, that the foregoing obligations shall not apply to the proportionate extent such claims or damages are caused by the gross negligence or willful misconduct of the Indemnified Parties.

SECTION 9. MISCELLANEOUS PROVISIONS

9.1 INTERPRETATION

In this Agreement, where appropriate:

9.1.1 The singular includes the plural and vice versa;

9.1.2 References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;

9.1.3 The words "including," "includes" and "include" are deemed to be followed by the words "without limitation,";

9.1.4 A reference to any entity includes such entity's successors and permitted substitutes and assigns; and

9.1.5 Words of any gender used in this Agreement shall include each other gender where appropriate.

9.2 RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Sites Authority and RD 108 each act in an independent capacity, and none is to be considered the officer, agent, contractor or employee of another.

9.3 SEVERABILITY

9.3.1 If any provision or part of this Agreement is ruled invalid (including invalidity due to any change in law) by a court having proper jurisdiction, then the Parties shall:

- (a) Promptly meet and make efforts to negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including (as applicable) an appropriate adjustment to obligations to be performed or payments to be made in accordance with this Agreement to account for any change in the services rendered pursuant to this Agreement resulting from such invalidated portion; and
- (b) If necessary or desirable, apply to the court or other decision maker (as applicable) that declared such invalidity for an interpretation of the invalidated portion to guide the Parties' negotiation.

9.3.2 The invalidity or unenforceability of any such provision or part shall not affect the validity or enforceability of the balance of this Agreement, which shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable provision or part.

9.4 NOTICES

Any notices required or permitted under this Agreement shall be in writing and sufficiently given if made in writing and (a) delivered personally, (b) sent by registered or certified mail, postage prepaid, or (c) sent by facsimile or email communication, in each case addressed to the respective Parties, as follows:

RD 108: Lewis Bair
P.O. Box 50
Grimes, CA 95950
Email: lbair@rd108.org

Sites Authority: JP Robinette
P.O. Box 517
Maxwell, CA 95955
Email: jrobinette@sitesproject.org

The Parties may from time to time change the address to which notice may be provided by providing notice of the change to the other Parties.

9.5 OTHER AGREEMENTS NOT PROHIBITED

Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

9.6 ASSIGNMENT

Except as otherwise provided in this Agreement, the rights, titles, and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing body of each Party to this Agreement.

9.7 SECTION HEADINGS

The section headings in this Agreement are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

9.8 GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law, the JPA Agreement, and the ordinances, regulations, codes, and executive orders enacted and/or promulgated pursuant thereto. The venue for any litigation from any dispute shall be in the County of Colusa.

9.9 CONSTRUCTION OF LANGUAGE

It is the intention of the Parties to this Agreement that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

9.10 COOPERATION

The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.

9.11 SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of Sites Authority and RD 108 and each of their permitted successors, assigns, and legal representatives.

9.12 ENFORCEMENT

The Parties are hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.

9.13 INTEGRATION

This Agreement, together with its incorporated documents and references, contains the entire, integrated agreement of the Parties, and supersedes any and all other prior to contemporaneous negotiations, understandings, and oral or written agreements between the Parties.

9.14 AMENDMENT

Except as otherwise may be provided in this Agreement, neither this Agreement nor any provision hereof may be modified or amended except by a written instrument signed by the Parties.

9.15 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.16 NO THIRD PARTY BENEFICIARIES

All of the covenants contained in this Agreement are for the express benefit of each Party, this Agreement is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed.

9.17 ADVICE OF COUNSEL

The Parties acknowledge that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement is the product of negotiation and therefor shall not be construed against any Party.

9.18 COMPLIANCE WITH LAWS

RD 108 and Sites Authority shall comply will all applicable law, regulations, executive orders, policies, procedures, and directives.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and attested by their proper officers duly authorized on the day and year set forth below, making the same effective on the date signed by the last of all Parties to this Agreement.

SITES PROJECT JOINT POWERS AUTHORITY

By: _____
Name: Jerry Brown
Title: Executive Director

RECLAMATION DISTRICT NO. 108

By: _____
Name: Lewis Bair
Title: General Manager