



Meeting: **Reservoir Committee & Authority Board Agenda** **February 16, 2024**
Item 3.2

Subject: **Draft Benefits & Obligations (B&O) Contract**

Requested Action:

Receive an update on the a) development of the Benefits & Obligations Contract, Amended and Restated Joint Powers Agreement, and Phase 3, 4, 5 Bylaws and b) next steps to achieving Participants securing authority to execute these documents.

Detailed Description/Background:

The Benefits & Obligations Contract (B&O Contract), Amended and Restated Joint Powers Agreement (JPA Agreement) and Phase 3, 4, and 5 Bylaws as a whole form the governance structure for Phase 3, 4, and 5. Together these documents, when executed by Participants and the Sites Authority, inclusive of each individual JPA member, will be the contractual basis for decision making on the Project. Staff has advanced the B&O Contract, JPA Agreement, and Bylaws alongside each other based on the Final Adopted Guiding Principles and Preliminary Terms agreed to and provided by the Authority Board and Reservoir Committee, and direction from the Governance Ad Hoc Subcommittee. Public drafts of all three documents are attached. For reference and your use in discussing the Sites Project contracts and governance structure among your own agency, staff is also providing a Frequently Asked Questions (FAQ) document (included as Attachment A). If you have other questions you would like to see addressed in the FAQ, please raise them with Staff. This document will be updated as needed. The drafts of the B&O Contract, JPA Agreement and Bylaws are included as Attachments B, C, and D, respectively.

It is important for all JPA members and Participants to be engaged and constructive in the development of these agreements and identify any “deal stoppers” immediately. Staff anticipates bringing forth another update including the current state of the documents in June 2024.

Staff requests that Participants and JPA members 1) conduct a detailed review of the attached public draft B&O Contract, JPA Amendment, and Bylaws and provide any comments from your agency by the March 22, 2024 meeting, and 2) consider what information and/or timing of materials is needed to expeditiously secure within your agency authorization to execute these agreements. as applicable, and identify any gaps you foresee with the current proposed approach.

Operations Plan:

The draft B&O Contract includes contractual provisions related to Project operations. The Operations Plan, Version 2.0 (refer to Agenda Item 03-01) is intended to be used to describe the process and systems Authority Staff will be using to coordinate Sites operations with Storage Partners and permitting agencies.

Prior Action:

January 2024 – Confirmed the development of the B&O Contract remains consistent with the board adopted Guiding Principles and Preliminary Terms and delegate development of further operational details to the Operations and Engineering Committee.

Fiscal Impact/Funding Source:

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to develop the Sites Reservoir Benefits & Obligations Contract. The drafting of the Joint Powers Agreement and Bylaws was anticipated in General Counsel’s (Young Wooldridge) Amendment 3 scope with \$100,000 of the contract authority being allocated which is sufficient to cover the costs.

Staff Contact:

JP Robinette (B&O Contract)

Jerry Brown / Alan Doud (Joint Powers Agreement/Bylaws)

Primary Service Provider:

Nossaman / Brown & Caldwell (B&O Contract)

Young Wooldridge (Joint Powers Agreement / Bylaws)

Attachments:

Attachment A – Draft B&O Contract and Governance FAQ Document

Attachment B – Draft B&O Contract

Attachment C – Draft JPA Amendment

Attachment D – Draft Bylaws Amendment



Draft Benefits & Obligations Contract and Governance Development Frequently Asked Questions (FAQ) Related to these Subjects

The Benefits and Obligations Contract (B&O Contract) between the Sites Authority and the Participants will describe the contractual commitments and obligations each of the Participants and Sites Authority will have to each other. The Governance of the Project is described in the B&O Contract plus the amended JPA and Bylaws. This FAQ is intended to be used for reference in Participants' continued review and comment on these contract documents and to assist the Participants in developing their approach to getting B&O Contract signature authority from their Boards, representing the transition to a final and irrevocable commitment to the Project and a revised governance for Phase 3, 4, and 5.

What does a Participant get when entering into a B&O Contract?

- Participants get a contractual commitment to a share of the Project's storage space (B&O 3.5) and a share of actual diverted water made under the Sites Water Right, along with control over the use of that share of the asset in cooperation with other Storage Partners. In addition, the Participant schedules releases of water out of the Reservoir to the primary point of delivery and in some cases, a secondary point of delivery (B&O 4.4). The Sites Authority commits best efforts in achieving all Storage Partners (Participants, State, Reclamation) requests and where physical limitations in capability occur, the Sites Authority will allocate capacity or provide rescheduling as available to accommodate requests in coordination with Storage Partners.

What kicks off the process for Participant home-boards to consider signing a B&O Contract? When will this occur?

- A recommendation by the Reservoir Committee and a Resolution of the Authority Board to Offer Capacity Interest and water service in the Sites Reservoir Project (a "Resolution to Offer Capacity and Service") through the B&O Contract will initiate the process for home-board review and action. It is expected that this action would be taken after determining sufficient progress has been made on finalizing key permits and agreements and developing an updated project cost estimate. Please refer to the condition precedent reporting document reviewed at the August 18, 2023 and November 17, 2023 Board meetings for the current status of the activities to be completed prior to the execution of the B&O Contracts.

- A deadline for returning an executed B&O Contract would be set at the time of adopting the Resolution. Currently a six-month period is planned for all Participants to complete their approvals.

Why is signing the B&O Contract critical to the Project?

- Once signed, the B&O Contract represents a final and irrevocable commitment to proceed with the Project. The B&O Contract will supersede all prior Participant Agreements (B&O 2.3) and will be the basis for funding, financing, constructing, and operating the Project. For Participants, the B&O Contract describes the obligations of and the benefits that flow to each of the Participants. For the Sites Authority, it outlines the Sites Authority's obligation to build and operate the Project, largely at the direction of the Participants. (B&O Recitals D-F).
- Together with the amended JPA and Bylaws, these three documents are the contractual commitments of the parties to the governance of the Project through Phase 3, 4, and 5. These documents specify the representation in decision making that each Storage Partner will have in the implementation of the Project.

What is required for the B&O Contract to take effect?

- For the B&O Contract to take effect, the Sites Authority must receive executed counterparts representing 100% of Base and Downstream Capacity Interests and the Sites Authority must also execute the B&O Contract (B&O 2.1.1).
- As a practical matter, having 100% Capacity Interests under contract will require the Sites Authority to execute the State and Federal Contracts (currently ~25% of Capacity Interest) (B&O Appendix 2).
- The Sites Authority amended JPA and Bylaws must also be executed which involves each of the JPA member agencies obtaining approval from their individual home boards.

What is required for the Project to move into construction?

- The B&O Contract outlines conditions precedent to construction including determination by the Sites Authority that it has secured all necessary approvals and permits and a resolution of the Reservoir Committee recommending commencement of construction (B&O 3.2).

- The adopted overall Project Schedule shows “breaking ground” in 2026 which would involve preparations for heavy construction (e.g. mobilization, securing power/water/sewer at field offices, clearing and grubbing, etc) which are activities envisioned to be allowed to precede prior to adopting the construction Resolution.

How will all of the approvals come together to “seal the deal”?

- A process similar to escrow on a home sale is envisioned due to the number of parties involved and the interdependency of the various documents with each becoming effective only upon the completion of all. Achievement of 100% capacity interest under contract will require as a minimum (note: the sequence of approvals is being evaluated and is not yet represented here):
 - Each Participant executes the B&O Contract, which commits the Participant to being a Reservoir Committee member and to be subject to the amended JPA and Bylaws. (22 Agencies)
 - The Sites Authority adopts the Amended and Restated JPA and the Phase 3,4,5 Bylaws, executes the B&O Contract, executes the Proposition 1 Water Storage Investment Program Contracts and the Reclamation Partnership Agreement. (1 Agency)
 - Each JPA member agency approves the Amended and Restated JPA and the Phase 3,4,5 Bylaws. (9 Agencies)
 - The California Water Commission authorizes final award of Proposition 1 funds and acknowledges the necessary Proposition 1 Water Storage Investment Program Contracts. (1 Agency)
 - The Bureau of Reclamation executes the Reclamation Partnership Agreement. (1 Agency)

What happens if the Project is undersubscribed prior to these final commitments being executed?

- We don’t expect this to happen but it is possible, so it is prudent to plan for just in case. The existing priority system for deciding where to offer contracts for Capacity Interest as described in the Credit Reimbursement Policy needs to be confirmed by the Board. At this juncture, Staff is not aware of any current Participants indicating an intent to drop or reduce their participation. Also, the waiting list has now grown to 15 agencies and approximately 250,000 af of storage space so demand is strong.

- However, last minute changes to participation levels or payment approach would be disruptive and have a schedule impact because all of the finance planning and contract document preparation is occurring around the current participation.

How does this B&O Contract relate to the other agreements and does anyone have express higher priority?

- To ensure that each Storage Partner has the ability to manage their own storage space and prioritize their use of Sites water, the Authority Board adopted the Storage Principles. The Storage Principles identify that all Storage Partners, including the State of California and Reclamation, have discretion over release of water from their Storage Allocation. The Storage Principles also identify a process to work through any release conflicts to meet the water demands of Storage Partners
- Each Storage Partner has rights that are exclusive to them, independent of the other Storage Partners, and within their sole control to the extent another is not impacted (B&O 4.2.3).
- The Sites Authority intends to enter into contracts with the State, and Reclamation that have similar terms and conditions as those that are proposed with Participants. However, there are provisions in the state and federal statutes that will need to be addressed in the state and Reclamation contracts which will make these contracts unique to them. Participants will have the final forms of the State and Reclamation agreements available prior to their considering execution of the B&O Contract.

What document takes precedence in the event of ambiguity?

- B&O 1.1.3 stipulates the following order of precedence depending on the extent of the ambiguity but generally with first being the B&O Contract, then the Bylaws, and finally the JPA Agreement.

Are Participants required to participate in the Sites Authority's Project Financing?

- No. The B&O Contract includes provisions for both Financing Participants (B&O 5.3) and Self-Funding Participants (B&O 5.5). The B&O Contract also allows for use of both approaches.
- It should be noted that the group financing may depend on having a high level of participation in Sites Financing from rated entities. It was acknowledged that there are benefits to this group financing in the Guiding Principles (Guiding Principles 4.2)

Can future projects be completed?

- Yes, other projects within or complementary to the Sites facilities are permitted under the B&O Contract. If the project is considered a capital improvement in order to continue to deliver initial Project functions, Participants may not opt out (B&O 9.2). If the proposed project will deliver new benefits, it can be pursued by a subset of Participants (B&O 9.3).

What happens if a Participant doesn't make a payment?

- B&O 10 describes the default process in detail. A supplement is included as Exhibit 1 to this document.

What happens if there is a dispute about the Sites Contract Document or any other referenced agreement?

- Each of the governance documents covers the dispute resolution process to be followed depending who the dispute is between. There are three scenarios covered in the documents thus far: JPA member has a dispute with another JPA member, the Reservoir Committee has a dispute with the Authority Board, a Participant has a dispute with the Authority Board. Supplements are included as Exhibits 2, 3 and 4 to this document.
- Dispute resolution between the Authority Board and/or State and Federal Storage Partners has not yet been determined but agreement to a similar process as to that described in the supplements will be sought.

Exhibit 1: Sites “Default Waterfall”

The Sites Benefits & Obligations Contract (B&O Contract) addresses potential payment defaults by one or more Participants in Section 10.

In the event a Participant fails to make any payment (i.e. debt service and/or any O&M) in full when such payment is due, Sites will inform the Participant of such failure through a written demand pursuant to Section 10.1.1. of the B&O Contract.

The Participant then has 30 days to remedy that payment default, after which Sites would provide written notice of suspension or termination of one or more of: the Participant’s Capacity Interest, interest in the Participant’s Water and rights to the services provided by Sites (Sections 10.2, 10.3 and 10.4 of the B&O Contract). This termination or suspension will become effective 30 days from the written notice of such termination or suspension.

In any case, the defaulting Participant will still be liable for any payment and the Participant’s share of Project Costs until such obligation is otherwise paid or incurred by another Participant (Section 10.5.6. of the B&O Contract).

Upon a default and termination of the Participant’s Capacity Interest and interest in Participant’s Water under section 10.3 and 10.4 of the B&O Contract, Sites is obligated to use its best efforts to transfer the defaulting Participant’s interests for all or a portion of the remaining contract. First, Sites will work with existing Participants to determine if any Participant wishes to increase its Capacity Interest, right to Sites Water and right to convey water by acquiring some or all of the defaulting Participant’s interest. If there is more Participant interest than available capacity, water etc., the defaulting Capacity Interest and interest in the defaulting Participant’s Water will be allocated pro rata among the interested Participants. Otherwise, the defaulted interests will be allocated pursuant to the Participants’ stated quantities.

Upon assignment of the defaulted interests, the assigned Participants will be obligated to pay some (if the defaulting Participant has made partial payment) or all of the amounts unpaid and will be obligated to pay the acquired Project Costs (in addition to the Participant’s original obligations) for the balance of the contract period assigned (Sections 10.5.1, 10.5.2).

If there is insufficient interest among the existing Participants to acquire all of the defaulting Participant’s Capacity Interest and rights to Participant’s Water, Sites will make those interests available to other parties. The new party or parties will assume the obligations and be entitled to the benefits of the Benefits and Obligations Contract. This transfer will not occur unless Sites has determined

the transfer will not affect the tax-exempt status of any Sites Financing (Sections 10.5.3, 10.5.4) and is subject to the shared decision making of the Reservoir Committee and the Authority Board.

If there is insufficient interest among the existing Participants or any qualified outside entity to acquire all of the defaulting Participant's Capacity Interest and interest in the defaulting Participant's Water, all or the remaining amounts will be assigned to the non-defaulting existing Participant's in proportion to their then existing Capacity Rights and interest in Sites Water. In exchange, each of the existing Participants will receive the benefits and incur the obligations to pay for Project Costs associated with those acquired interests (Section 10.5.5).

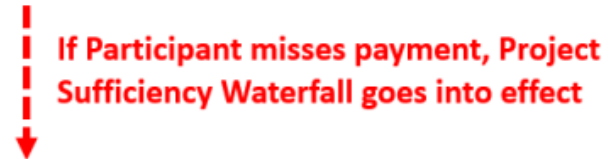
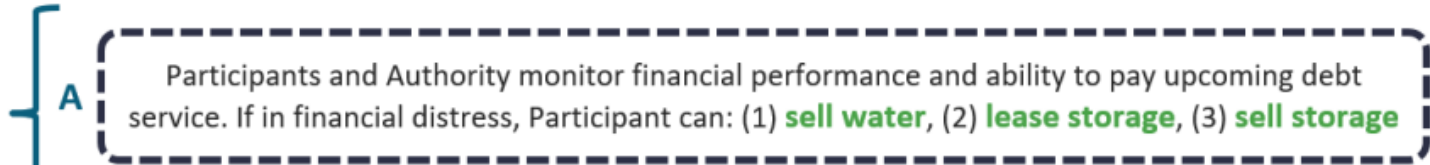
During the pendency of these actions, Sites will utilize amounts in the Liquidity Reserve to make needed payments on an interim basis. The Liquidity Reserve will be replenished to the Liquidity Requirement through payments (if any) from the defaulting Participant(s) and the non-defaulting Participants, who will pay the remaining amounts to meet the Liquidity Requirement in proportion to their Capacity Interest (Master Resolution Section 3.5 and definition of Fixed O&M Costs in the B & O Contract). The Sites Authority would collect such amounts in the next succeeding invoice cycle beginning on January 1.



Project Sufficiency (Default) Waterfall

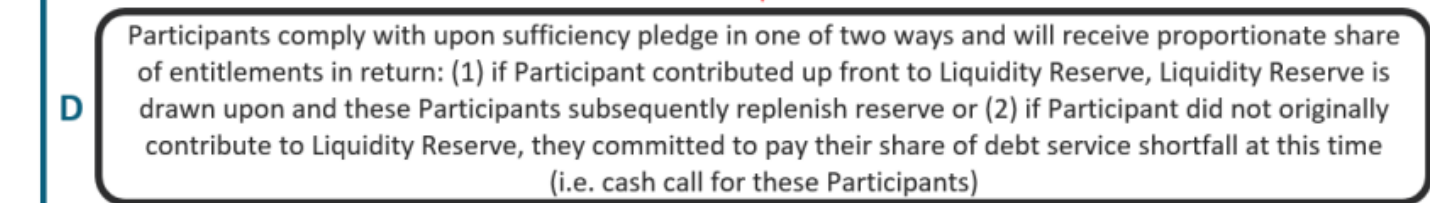
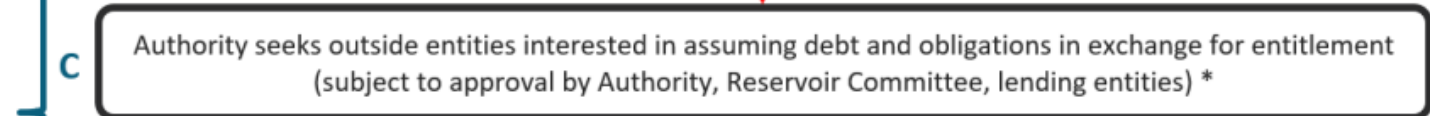
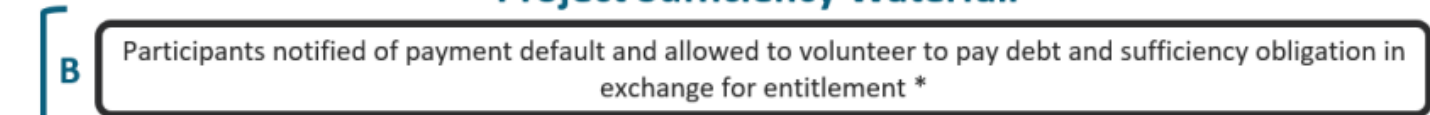
as presented in the 2021 Draft Plan of Finance / described in Section 10 of the Draft Benefits & Obligations Contract

Participant in control of asset/project rights



Project Sufficiency Waterfall

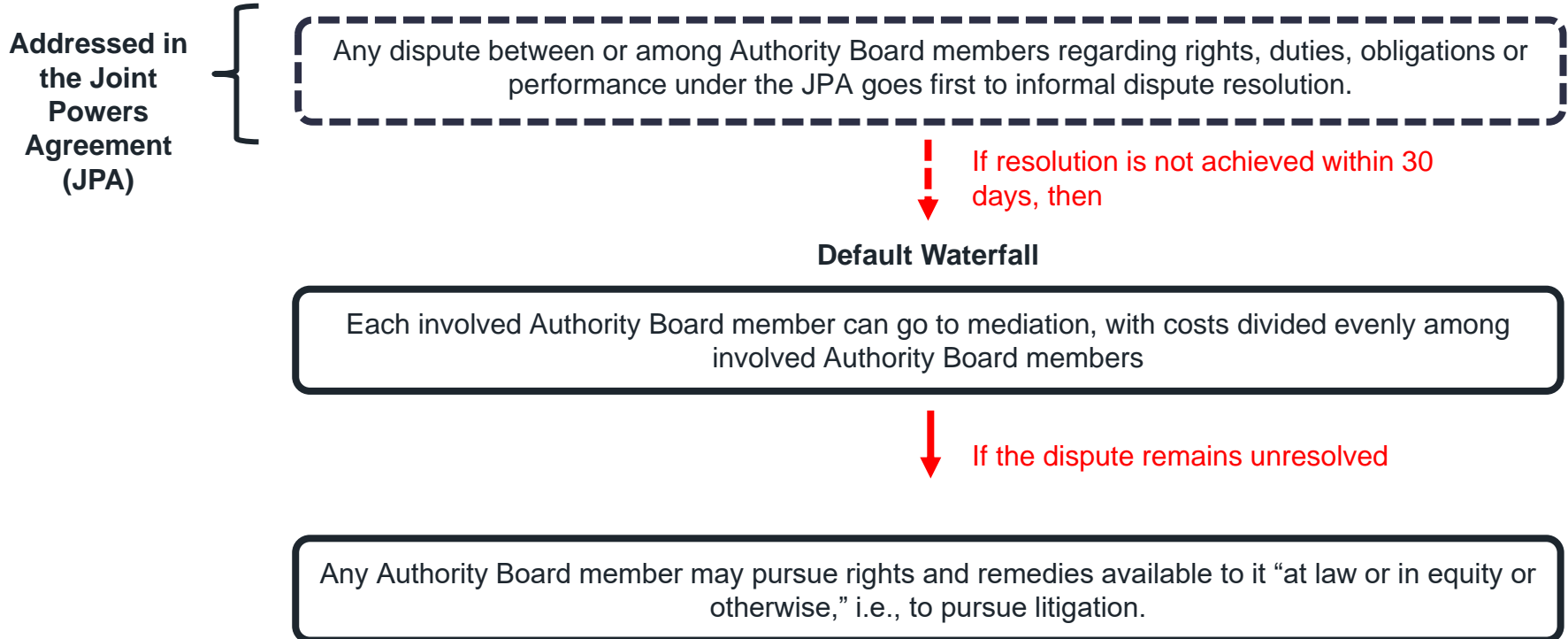
Authority in control of asset/project rights



* Changes will require lender/rating agency notification and approval

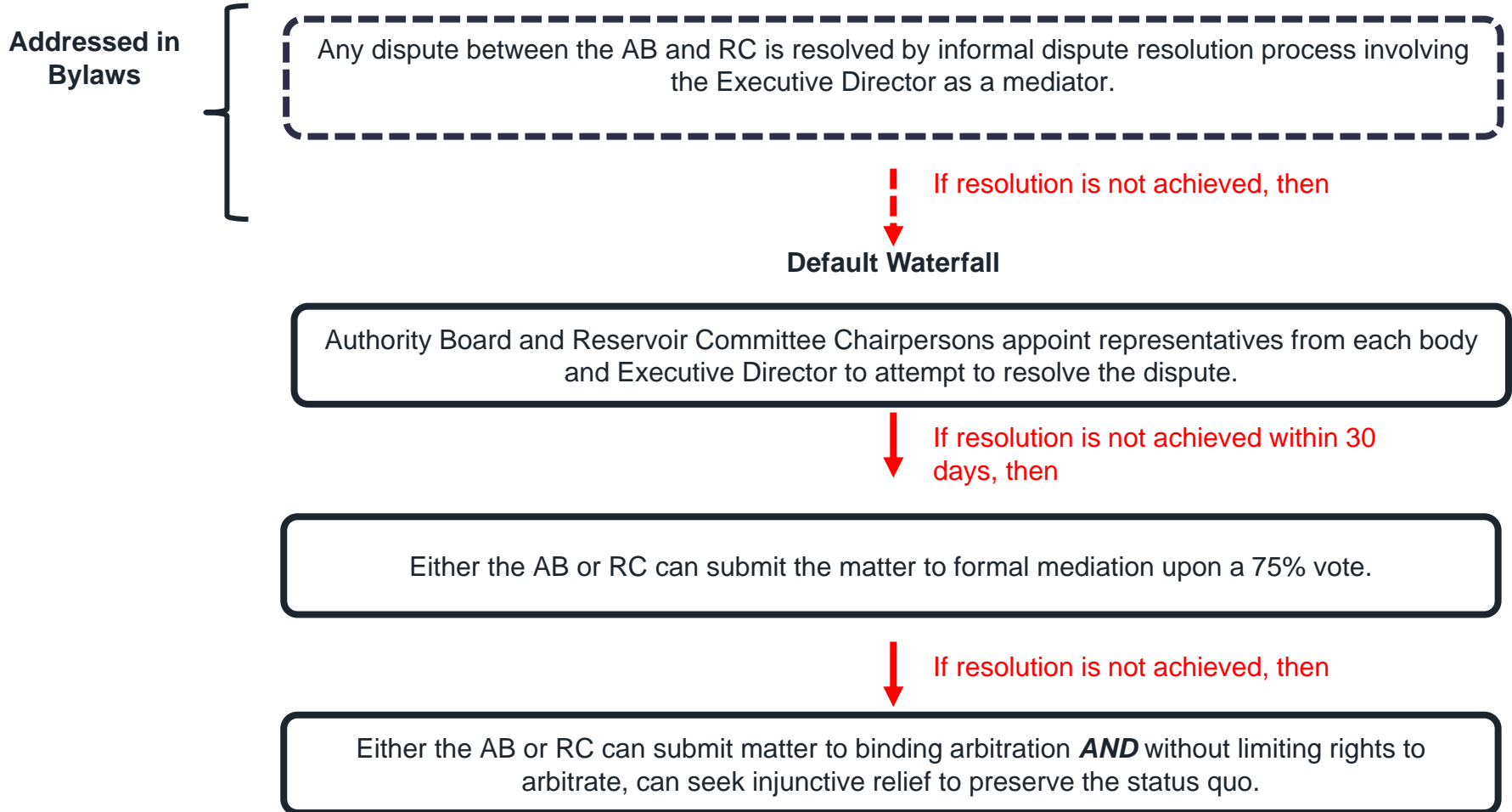


▪ Dispute among Authority Board Members



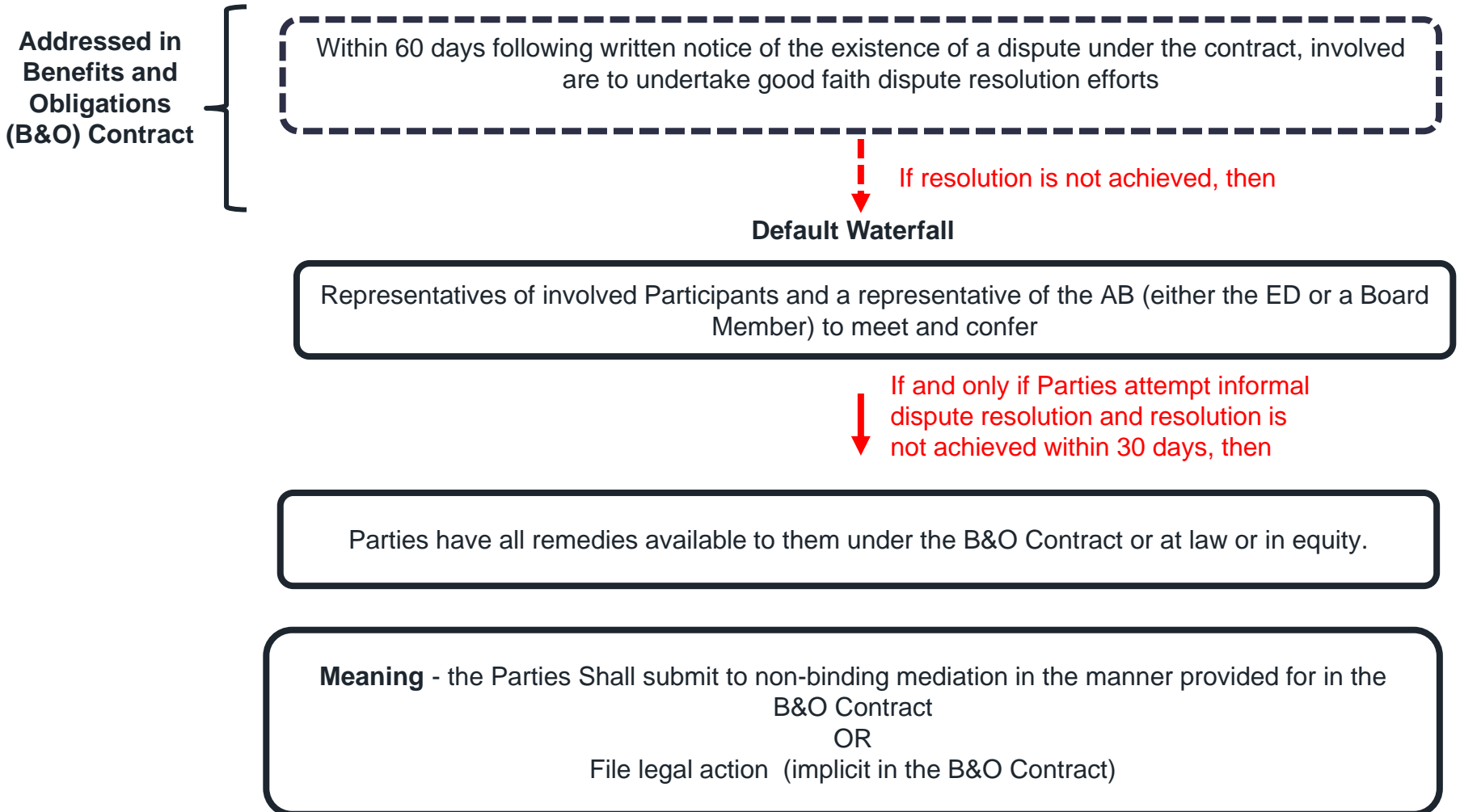


Dispute between Authority Board (AB) and Reservoir Committee (RC) Members





Dispute between or Among Authority Board (AB), Participant or Participants



[Note: The Benefits and Obligations Contract are being provided as a draft, and the terms reflected in this draft remain subject to further revision and negotiation among the parties involved.]

Draft Sites Reservoir Benefits & Obligations Contract

**Among
Sites Project Authority,
and
Participants**

Dated as of [____], 2024

Discussion Draft: February 16, 2024

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. CONTRACT APPLICABILITY; DEFINITIONS AND INTERPRETATION.....	3
SECTION 2. TERM; PRIOR AGREEMENTS; RESERVOIR COMMITTEE; PAYMENT APPENDICES.....	5
SECTION 3. PROVISIONS APPLICABLE TO DEVELOPMENT, CONSTRUCTION AND OWNERSHIP	6
SECTION 4. GENERAL PROVISIONS APPLICABLE TO OPERATIONS AND MAINTENANCE	8
SECTION 5. FINANCING OF THE PROJECT	12
SECTION 6. PAYMENT OF PROJECT COSTS	15
SECTION 7. SITES AUTHORITY FINANCIAL COVENANTS.....	21
SECTION 8. LEASING OR SALE OF CAPACITY AND SALES OF WATER	21
SECTION 9. MODIFICATIONS FOR CAPITAL IMPROVEMENTS.....	23
SECTION 10. DEFAULT.....	24
SECTION 11. TERMINATION	27
SECTION 12. DISPUTE RESOLUTION	28
SECTION 13. LIABILITY.....	29
SECTION 14. INSURANCE.....	30
SECTION 15. MISCELLANEOUS.....	30
15.1 Relationship of Parties	30
15.2 Severability	30
15.3 Notices.....	31
15.4 Other Agreements Not Prohibited	31
15.5 Assignment.....	31
15.6 Section Headings.....	31
15.7 Governing Law and Venue.....	31
15.8 Construction of Language	32
15.9 Successors	32
15.10 Enforcement	32
15.11 Integration.....	32
15.12 Amendment	32
15.13 Authorization and Opinion.....	33

Sites Project Authority – Benefits & Obligations Contract – Sites Reservoir Project

15.14 Counterparts33
15.15 No Third-Party Beneficiaries33
15.16 Advice of Counsel33
15.17 Compliance with Laws and Financing Agreements34

Appendix 1 Definitions
Appendix 2 Project Specific Information
Appendix 3 Form of Self-Funding Notice
Appendix 4 Form of Sites Financing Incurrence Notice
Appendix 5 Form of Participant Opinion Letter
Appendix 6 Form of Sites Authority Opinion Letter
Appendix 7 Payment Appendix
Appendix 8 Initial Sites Operations Plan

Draft Sites Reservoir Benefits & Obligations Contract Between Sites Authority, Each Participant in Appendix 2 and the Acquirer

This Sites Reservoir Benefits & Obligations Contract (this “**Contract**”), among the Participants listed in Appendix 2, the Acquirer and the Sites Project Authority (“**Sites Authority**”), sets forth the rights and obligations of the Parties (as defined in Appendix 1) with respect to the Project.

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 in accordance with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be modified from time to time (“**JPA Agreement**”). The Sites Authority was established for the purpose of designing, constructing, owning, operating and maintaining the Project (as defined in Appendix 1).

B. The Project Facilities consist of Sites Owned Facilities and Partner Facilities (each as defined in Appendix 1).

C. In compliance with the California Environmental Quality Act (CEQA) and its implementing guidelines, the Sites Authority released a Final Environmental Impact Report (Final EIR) for the Sites Project on November 2, 2023. The Sites Authority certified the Final EIR and adopted the Project with Board Resolution 2023-02 at its November 17, 2023 meeting.

D. Subject to compliance with Applicable Law (including CEQA and NEPA), the Sites Authority intends to, (i) design and construct the Sites Owned Facilities and certain other facilities, (ii) own the Project Assets, excluding the Partner Facilities, (as defined in Appendix 1), (iii) operate and maintain the Sites Owned Facilities; and (iv) contract with certain entities for the use, operations and maintenance of and improvements to and conveyance through existing Partner Facilities, in each case, for the benefit of the Participants and in accordance with this Contract.

E. The Sites Authority will grant each Participant, and each Participant will own a Capacity Interest in the Base Facilities and the Downstream Facilities (each as applicable and defined in Appendix 1), in accordance with this Contract.

F. The Sites Authority expects to obtain the Sites Water Right and will provide water service to the Participants in accordance with this Contract and in accordance with the direction of the Participants, consistent with Section 4.12 of this Contract.

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

SECTION 1. CONTRACT APPLICABILITY; DEFINITIONS AND INTERPRETATION

1.1 Contract and Relationship with JPA Agreement

1.1.1 This Contract means the contractual relationship among the Parties:

(a) for Self-Funding Participants, constituted by:

(i) this Contract and all Appendices and Exhibits (excluding Section 5.3 and Appendix 7);

(ii) Section 5.5 only to the extent that a Participant satisfies all or a portion of its Fixed Project Cost Funding Obligations through Self-Funding Participant Cash Payments, and then only for the term of any payments for Fixed Project Costs using proceeds from such Self-Funding Participant Cash Payments; and

(iii) the applicable payment appendix in Appendix 7A, Appendix 7B or Appendix 7C, identified for each Participant in the Project Specific Information; or

(b) for Financing Participants constituted by:

(i) this Contract and all Appendices and Exhibits (excluding Section 5.5 and Appendix 7);

(ii) Section 5.3 only to the extent that it satisfies all or a portion of its Fixed Project Cost Funding Obligations through participation in a Sites Financing. With respect to a Financing Participant, the terms of Section 5.3 are not in effect at such times as there is no outstanding Sites Financing or the Sites Authority is not in the process of entering into a Sites Financing in which such Participant is or will be participating; and

(iii) the applicable payment appendix in Appendix 7A, Appendix 7B or Appendix 7C, identified for each Participant in the Project Specific Information.

1.1.2 Where the Sites Authority or the Sites Authority Board is authorized to take actions with respect to the Project under this Contract, such authorization extends to any committee of the Sites Authority to the extent such responsibility for such actions have been delegated to such committee by the Sites Authority Bylaws or by an action of the Sites Authority Board.

1.1.3 The Sites Authority Bylaws, the JPA Agreement and this Contract are to be interpreted in a manner that attempts to reconcile each with one another and affords the terms of each the fullest possible effect. In no event shall any such interpretation be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. If there is an ambiguity, discrepancy, inconsistency or conflict between this Contract and the JPA Agreement or the Sites Authority Bylaws, then subject to Section 1.1.4, the following order of precedence shall apply:

- (a) this Contract;
- (b) the Sites Authority Bylaws; and
- (c) the JPA Agreement.

1.1.4 The Sites Authority Board and each Participant shall undertake prompt and good faith efforts to eliminate any ambiguity, discrepancy, inconsistency or conflict that may exist or arise among the documents described in Section 1.1.3 in a manner consistent with the governance structure for the Project described in Section 4.12.

1.2 Definitions

Unless the context otherwise requires, capitalized acronyms, abbreviations and terms used in this Contract have the meanings given in Appendix 1.

1.3 Interpretation

In this Contract, unless the context otherwise requires:

1.3.1 the singular includes the plural and vice versa;

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

1.3.3 the words “including,” “includes” and “include” are deemed to be followed by the words “without limitation”;

1.3.4 a reference to a Section is a reference to a Section of this Contract;

1.3.5 a reference to any entity includes such entity’s successors and permitted substitutes and assigns; and

1.3.6 words of any gender used in this Contract shall include each other gender where appropriate.

SECTION 2. TERM; PRIOR AGREEMENTS; RESERVOIR COMMITTEE; PAYMENT APPENDICES

2.1 Term

2.1.1 This Contract shall take effect upon:

(a) due execution of:

(i) the Contract by each of the Participants; or

(ii) State and Federal Contracts by the Sites Authority, the United States of America and the State,

representing Capacity Interests and Sites Authority Reserved Interests equal to [100]% of the Capacity Interest in Base Facilities and [100]% of the Capacity Interest in Downstream Facilities;

(b) delivery to the Sites Authority by each Participant of (i) an opinion from an attorney or firm of attorneys in substantially the form attached as Appendix 5 and authorization as required by Section 15.13; and (ii) an executed version of the Payment Appendix applicable to such Participant in substantially the form attached as Appendix 7A, Appendix 7B or Appendix 7C (as applicable); and

(c) due execution by the Sites Authority of the Contract and delivery to such Participants of an opinion for the Sites Authority of [____], Special Counsel and General Counsel to Sites Authority, in substantially the form of Appendix 6.

2.1.2 This Contract shall:

- (a) be dated and commence as of the signature and delivery date of the last executing and delivering Participant under Section 2.1.1 (the “**Effective Date**”); and
- (b) as to each Participant, and subject to the terms and conditions of the Sites Authority Bylaws and this Contract, continue for so long as each of that Participant and the Sites Authority continue to perform their obligations under this Contract.

2.1.3 Section 1, Section 2, Section 3.4, Section 3.5, Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10, Section 11, Section 12, Section 13, Section 14 and Section 15 of this Contract shall be perpetual unless terminated in accordance with this Contract. Section 3.1, Section 3.2, and Section 3.3 shall be in effect until Completion.

2.2 Notwithstanding the Effective Date of this Contract being fixed on the date that all Participants, the Sites Authority, the United States of America and the State, have complied with Section 2.1.1, it is agreed by each Participant that in consideration for the Sites Authority's signature to this Contract, and for its commitment to use its best efforts to obtain the commitment of all Participants, the State and the United States of America, to the Project, each Participant upon its execution and delivery of this Contract to the Sites Authority along with the required authorization and opinion described in Section 15.13 and any required evidence of compliance as required by Section 2.1.1 shall be immediately bound not to withdraw its respective offer made to enter into this Contract as executed and/or supplemented or to decrease or terminate its Capacity Interest for a period of 180 days from the date of the execution of this Contract by such Participant.

2.3 Prior Agreements

2.3.1 All Interim Agreements are terminated and of no further force and effect upon the Effective Date.

2.3.2 Any unexpended funds made available to the Sites Authority in accordance with such Interim Agreements shall be transferred into the Revenue Fund and credited by the Sites Authority to amounts payable by applicable Participants under this Contract for their respective Fixed Project Costs.

2.4 Reservoir Committee

By executing this Contract, each Participant shall (i) become a member of the Reservoir Committee, and (ii) actively participate in the Reservoir Committee, or shall appoint a representative to participate in the Reservoir Committee on behalf of such Participant, each in accordance with the JPA Agreement and the Sites Authority Bylaws.

2.5 Payment Appendices

If at any time a Participant elects to change its source of payment for Fixed Project Costs, such Participant may provide to the Sites Authority an executed version of the applicable Payment Appendix.

SECTION 3. PROVISIONS APPLICABLE TO DEVELOPMENT, CONSTRUCTION AND OWNERSHIP

3.1 Obligation of Sites Authority to Construct and Complete the Project

3.1.1 Subject to compliance with all Applicable Law and Governmental Approvals, Sites Authority agrees to use commercially reasonable efforts to construct and complete the Project in accordance with the Approved Design Documents, provided that (i) each Participant provides its share of all required funding under this Contract; (ii) the Sites Authority is not prohibited by Applicable Law from proceeding; and (iii) the Sites Authority and the Reservoir Committee have not mutually determined the Project to be infeasible and impractical in accordance with Section 4.12.

3.1.2 By entering into this Contract and accepting payments from Participants, the Sites Authority does not warrant that it will construct and achieve Completion of the Project.

3.2 Conditions Precedent to Construction

[Note to Participants: The list of conditions precedent may be revised closer to execution of the Contract.]

3.2.1 The Sites Authority shall commence construction of the Project upon satisfaction of the following conditions:

- (a) determination by resolution by the Sites Authority Board that commencement of all or a portion of construction is permitted under Applicable Law, Governmental Approvals and any necessary Partner Agreements; and
- (b) receipt by the Sites Authority of (i) a certified resolution of the Reservoir Committee recommending commencement of all or a portion of construction; and (ii) Governmental Approvals [and any necessary Partner Agreements] required to commence all or a portion of construction by Sites Authority.

3.2.2 The conditions precedent to construction in Section 3.2.1 are solely for the benefit of the Sites Authority. Such conditions precedent to construction may be waived (a) in whole or in part by action taken by each of the Sites Authority Board and the Reservoir Committee, and (b) with or without (i) conditions by the Sites Authority Board and Reservoir Committee, and (ii) any action of the governing body of any individual Participant.

3.3 Construction Progress Reports

The Sites Authority will provide Participants with construction progress reports in a form and substance approved by the Reservoir Committee.

3.4 Ownership of Project Assets

Subject to Section 3.5, Sites Authority shall own all Project Assets (excluding the Partner Facilities).

3.5 Capacity Interest

The Sites Authority hereby grants to each Participant, and each Participant shall own, a Capacity Interest in the Base Facilities and/or Downstream Facilities (as applicable and in the amounts described in the Project Specific Information) in accordance with this Contract.

3.6 Updates to Project Specific Information and Sites Operations Plan

3.6.1 The Parties agree that the Project Specific Information and the Sites Operations Plan may be updated from time to time to reflect changes or issues impacting the Project without amending the terms of this Contract.

3.6.2 No less frequently than annually, the Sites Authority will update:

- (a) the Project Specific Information to reflect (i) any changes in each Participant's Capacity Interest percentage as a result of sale or acquisition of Capacity Interest in accordance with Section 8, any acquisition or disposition of Capacity Interest in accordance with Section 10, or any other changes in Capacity Interest in accordance with this Contract; and (ii) other changes to the Project Specific Information to reflect changes or issues impacting the Project; and
- (b) Appendix 8 to reflect the latest version of the Sites Operations Plan, approved by the Reservoir Committee and the Sites Authority (as applicable) in accordance with Section 4.2.4 of the Contract.

SECTION 4. GENERAL PROVISIONS APPLICABLE TO OPERATIONS AND MAINTENANCE

4.1 Obligation of Sites Authority to Operate and Maintain the Project

4.1.1 Subject to compliance with all Applicable Law and Governmental Approvals, Sites Authority agrees to diligently operate and maintain the Project Facilities in accordance with the Sites Operations Plan and Good Industry Practice, provided that (i) the Participants provide all funding required under this Contract for operations and maintenance; and (ii) the Sites Authority and the Reservoir Committee have not mutually determined the continued operation of the Project is infeasible and impractical.

4.2 Operations Plan

4.2.1 Each Participant acknowledges and understands that the storage and conveyance of Water through the Project Facilities consistent with each Participants' Capacity Interest will require and will be implemented in accordance with the Sites Operations Plan.

4.2.2 The initial form of the Sites Operations Plan approved by the Reservoir Committee and the Sites Authority (as applicable) in accordance with the Sites Authority Bylaws is included as Appendix 8. Following a change to the Sites Operations Plan in accordance with Section 4.2.4, the Operations Plan will be updated and attached to this Contract in accordance with Section 3.6.

4.2.3 The Sites Operations Plan is intended to implement and provide detail to the terms of this Contract and shall not modify or amend this Contract in a manner that results in a material adverse effect on a Participant's rights under this Contract to control its Capacity Interest, or its ability to have Water diverted into, stored in, or released through the Project Facilities on a pro-rata and substantially similar basis with other Participants taking into account each Participant's Capacity Interest. In the event of any inconsistency between the Sites Operations Plan and this Contract, the terms of this Contract shall prevail.

4.2.4 Subject to the Sites Authority Bylaws and the JPA Agreement, changes to the Sites Operations Plan are subject to approval by the Reservoir Committee and the Sites Authority (as applicable) as described in the Sites Authority Bylaws. Prior to any such approval, the prior version of the Sites Operations Plan shall remain in full force and effect.

4.3 Use of Capacity Interest

Each Participant acknowledges and agrees that:

4.3.1 its Capacity Interest shall only be used for the storage and conveyance of Sites Water to which Participants are entitled under this Contract, or storage and conveyance of such other Water which may be stored in and conveyed through the Project Facilities in accordance with the Sites Water Right, Applicable Law and the Sites Operations Plan; and

4.3.2 except as set out in Section 8, it may not use another Participant's Capacity Interest for the storage and conveyance of Water, provided that Participants with unused conveyance capacity will permit other Participants to use such unused conveyance capacity in accordance with Applicable Law.

4.4 Projected Storage and Release Schedule

4.4.1 In accordance with the timing and process described in the Sites Operations Plan, each Participant shall provide the Sites Authority with (i) a projected schedule for Water the Participant projects will be stored in or conveyed from the Project ("**Storage Opportunity Request Form**"), which, when added to such Participant's Storage Partner's Stored Water, shall not exceed that Participant's Storage Allocation or other Storage Allocation shared, leased or acquired in accordance with Section 8 of this Agreement and (ii) a projected schedule for releases of such Participant's Storage Partner's Stored Water ("**Release Request Form**"), which shall not exceed that Participant's Capacity Interest for conveyance or other Capacity Interest for conveyance shared, leased or acquired in accordance with Section 8 of this Agreement.

4.4.2 Upon receipt of each Participant's Storage Opportunity Request Form, Release Request Form, and any other forms required in the Sites Operations Plan, the Sites Authority will review each Participant's proposed schedules and make necessary modifications in the manner provided in the Sites Operations Plan to ensure that the amounts, times, and rates of delivery of Water to the Participant will be consistent with the Participant's Capacity Interest, Storage Partner's Stored Water, Storage Allocation and the Sites Authority's overall delivery ability in accordance with the Sites Water Right, considering the then current delivery schedules of all Participants. The Sites Authority will not unreasonably withhold any decisions made pursuant to this subsection and will not make a decision that results in a material adverse effect on a Participant's rights under this Contract to control its Capacity Interest, or its ability to have Water diverted into, stored in, or released through the Project Facilities in accordance with its Capacity Interest on a pro-rata and substantially similar basis with other Participants.

4.5 Water

4.5.1 Without limiting Section 4.6.2, and subject to the Sites Water Right, Applicable Law and Governmental Approvals, all Participants may store Water in, or convey Water by use of the Participants' respective Capacity Interest in the Project Facilities in accordance with the Sites Operations Plan.

4.5.2 All Participants shall bear the risk of loss of Water in the Project Facilities and any shortfall or reduction in Water as described in the Sites Operations Plan.

4.6 Release of Water to Participants

4.6.1 Subject to the Sites Water Right, Applicable Law and Governmental Approvals, the Sites Authority shall take all actions reasonably practicable to release Water to Participants in accordance with the Participants' Release Request Form, the Participant's Capacity Interest and the Sites Operations Plan.

4.6.2 The Sites Authority's liability and responsibility to the Participants to convey a quantity of Water ordered for conveyance by release from the Project under this Contract shall be in accordance with the Sites Operations Plan.

4.6.3 In the event that requests by Participants for the conveyance of Water to, or release of Water from, the Project exceeds available conveyance capacity at any Project Facilities, such request will be considered and determined by the Sites Authority in accordance with the Sites Operations Plan.

4.6.4 The Sites Authority may temporarily discontinue or reduce the conveyance of Water to, and release of Water from, the Project Facilities as described in the Sites Operations Plan.

4.7 Power Generation

To the extent power, energy or other services are generated by Project Facilities, sales of such power, energy and all other services will be managed by the Sites Authority. Any revenues received by the Sites Authority for the sale or other disposition of power, energy or other services shall be allocated by the Sites Authority to Participants in the reasonable determination of the Sites Authority based on the general principle that those who released Water leading to the power generation will benefit from such sale or other disposition, subject to Sites Authority Policies.

4.8 Entry and Inspection

The Sites Authority and the Participants each agree that Participants shall be allowed, at reasonable times and upon reasonable prior notice, to enter onto the Sites Owned Facilities for reasonable purposes (including dam safety), in accordance with the Sites Authority's reasonable safety regulations and policies and subject to Applicable Law and Governmental Approvals.

4.9 Measurement of Water

Sites Authority shall measure, or cause to be measured, Water and shall keep and maintain accurate and complete records of diversions, storage and deliveries of Water in accordance with the Sites Operations Plan.

4.10 Excused Performance

4.10.1 Upon the occurrence of an event of Force Majeure, (a) the Sites Authority shall be excused from its obligations under this Contract for the period during which it is unable to comply with such obligations as a result of such event of Force Majeure, and (b) the Participants shall be excused from their obligations under this Contract for the period during which they are

unable to comply with such obligations as a result of the event of Force Majeure, other than the payment of Project Costs described in Section 6 of this Contract, which obligations are not subject to reduction or abatement.

4.10.2 Any excuse of obligations in accordance with this Section 4.10 is subject to the proviso that, upon obtaining knowledge of an event of Force Majeure, such Party: (a) promptly notifies the Sites Authority and/or the other Party or Parties of the event of Force Majeure; (b) provides reasonable details and updates relating to such event of Force Majeure; and (c) implements mitigation measures to the extent commercially reasonable.

4.11 Shortages

4.11.1 If for any other reason there is a reduction in the Sites Water diversions or releases or other circumstances, which, notwithstanding preventive or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of Sites Water to be made available to Sites Authority, storage, diversion and release of Sites Water will be adjusted in accordance with the Sites Operations Plan.

4.11.2 Neither the Sites Authority nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from the shortages in the amount of Water to be made available for conveyance to the Participants under this Contract caused by non-availability of Sites Water to Sites Authority under the Sites Water Right, Applicable Law, Governmental Approval or caused by drought, or any other cause beyond its control.

4.12 Governance

4.12.1 The Parties agree that the:

- (a) Sites Authority Board has reserved certain powers, as described in the JPA Agreement;
- (b) Reservoir Committee has been delegated exclusive decision-making capacity for specified activities, as described in the Sites Authority Bylaws, which shall not be amended without approval of the Reservoir Committee;
- (c) Sites Authority and the Reservoir Committee have shared decision-making capacity for specified activities, as described in the Sites Authority Bylaws; and
- (d) the Sites Authority Bylaws and the JPA Agreement set out voting procedures for amendment thereof that shall be complied with by all Parties.

4.13 Compliance with Partner Agreements

In performing its obligations under this Contract, the Sites Authority shall comply with the terms of the Partner Agreements.

4.14 Role of Acquirer and State Water Project Participants

4.14.1 By entering into this Contract, DWR agrees to fulfill the role of Acquirer on behalf of the SWP Participants and perform the obligations set out in Section 6.

4.14.2 Except as set out in Section 4.14.1, DWR shall have no rights, obligations or liabilities under this Contract (including with respect to default).

SECTION 5. FINANCING OF THE PROJECT

5.1 Sites Authority Financing of the Project

The Sites Authority:

5.1.1 agrees to provide Sites Financing for Fixed Project Costs, provided that each Financing Participant shall pay Sites Financing Costs relating to such Sites Financing allocable to the Participant in accordance with Section 6.4;

5.1.2 may incur Project Obligations from time to time for the purpose of financing or refinancing the Fixed Project Costs on an interim or permanent basis; and

5.1.3 in incurring Project Obligations, will use commercially reasonable efforts to obtain cost effective financing for the Fixed Project Costs on reasonable terms and conditions consistent with this Contract and with the approval of the Reservoir Committee.

5.2 Notice of Expected Incurrence of Sites Financing

5.2.1 The Sites Authority will provide written notice to the Participants substantially in the form of Appendix 4 of the expected incurrence of any Sites Financing at least 150, but not more than 180 days prior to (i) the expected date of the incurrence of such Sites Financing, or (ii) if the Project Obligations are expected to be sold in the public capital markets, the Business Day prior to the scheduled date on which the offering document (which may be a preliminary offering document) relating to such Sites Financing is anticipated to be made available to potential investors, that includes:

- (a) the anticipated date of the incurrence by the Sites Authority of such Sites Financing (a **“Proposed Sites Financing Incurrence Date”**);
- (b) a description of the proposed financing structure, expected method of sale, expected term, pro-forma cash flows and each Participant’s estimated share of the Fixed Project Costs to be financed or refinanced from the proceeds of such proposed Sites Financing;
- (c) each Participant’s estimated annual Sites Financing Costs relating to the proposed Sites Financing; and
- (d) the amount that the Participant would be required to deposit with the Sites Authority if the Participant elects to self-fund such costs in accordance with Sections 5.4 and 5.5,

(each such notice constituting a **“Sites Financing Incurrence Notice”**).

5.3 Provisions Applicable to Financing Participants

5.3.1 This Section 5.3 shall be applicable to each Financing Participant participating in a Sites Financing.

5.3.2 No later than 30 days following a request by the Sites Authority, each Financing Participant shall:

- (a) provide to the Sites Authority such information and disclosure as may be reasonably required by the Sites Authority in connection with the incurrence of a Sites Financing;
- (b) provide to the Sites Authority such information regarding that Participant as the Sites Authority may reasonably require in order to comply with (i) any reporting obligations under any Sites Financing; or (ii) the obligations of the Sites Authority under any continuing disclosure undertaking entered into in connection with the incurrence of a Sites Financing;
- (c) deliver to the Sites Authority all certificates and Participant counsel opinions reasonably required by the Sites Authority or bond counsel to the Sites Authority in connection with the sale and closing of such Sites Financing; and
- (d) execute and deliver to the Sites Authority such additional documents, including, any necessary further assurances in relation to the incurrence of any Sites Financing as the Sites Authority may reasonably request, provided that all such documents will be provided in accordance with Applicable Law.

5.4 Participant Self-Funding Election

5.4.1 Each Participant may elect to self-fund all or a portion of the Participant's share of Fixed Project Costs proposed by the Sites Authority to be financed or refinanced in accordance with a Sites Financing Incurrence Notice.

5.4.2 Such election shall be made by delivering written notice to the Sites Authority, substantially in the form attached as Appendix 3 (each, a "**Self-Funding Notice**"), on or before the 90th day prior to (i) the anticipated date of the applicable Sites Financing Incurrence Date or (ii) if the Project Obligations are expected to be sold in the public capital markets, the Business Day prior to the scheduled date on which the offering document relating to such Sites Financing is anticipated to be made available to potential investors, as applicable (a "**Self-Funding Election Date**"), setting forth the amount of Fixed Project Costs that the Participant proposes to finance or refinance from the proposed Sites Financing and any share of Fixed Project Costs that the Participant proposes to self-fund.

5.4.3 A Participant making an election in a Self-Funding Notice to self-fund only a portion of the applicable Fixed Project Costs assignable to that Participant with respect to Sites Financing shall be treated both as a Financing Participant and a Self-Funding Participant under this Contract with respect to such Sites Financing.

5.4.4 A Participant shall not be permitted to withdraw, change or otherwise terminate a Self-Funding Notice with respect to such self-funded portion of a Sites Financing after the applicable Self-Funding Election Date; provided that a Participant may increase its self-funded portion of a Sites Financing after the Self-Funding Election Date if the financing structure, terms, or conditions set forth in the good faith estimates accompanying the resolution of the Sites Authority authorizing such financing deviate materially from those provided in the Financing Incurrence Notice; provided further that an election of a Participant to increase its self-funded

portion pursuant to this Section 5.4.4 must be made within 10 days after the consideration of the resolution of the Sites Authority authorizing such financing.

5.4.5 The execution of a master agreement by the Sites Authority in connection with the United States Environmental Protection Agency’s Water Infrastructure Finance and Innovation Act loan program, any other State, federal or other public agency loan or any agreement relating to short-term or interim borrowing, including revolving credit agreements, lines of credit and commercial paper notes, shall constitute a Sites Financing for purposes of this Section 5, regardless of when funds are drawn thereunder.

5.5 Provisions Applicable to Self-Funding Participants

5.5.1 This Section 5.5 shall apply to each Self-Funding Participant to the extent such Participant complies with such Participant’s obligation to pay the Fixed Project Costs identified in the respective Participant’s Self-Funding Notice through Self-Funding Participant Cash Payments.

5.5.2 Each Self-Funding Participant shall deposit cash with the Sites Authority in the amount specified in the Self-Funding Notice provided by the Self-Funding Participant to the Sites Authority under Section 5.4.2 (each, a “**Self-Funding Participant Cash Payment**”), by the date that is 60 days prior to (i) the applicable Sites Financing Incurrence Date, or (ii) if the Project Obligations are to be sold in the public capital markets, the Business Day prior to the scheduled date on which the offering document (which may be a preliminary offering document) relating to such Sites Financing is anticipated to be made available to potential investors (the “**Self-Funding Participant Cash Payment Date**”); provided that if the Self-Funding Cash Payment is not received by the Self-Funding Participant Cash Payment Date, the Participant will be provided with a grace period of 30 days after the Self-Funding Participant Cash Payment Date for the Participant to make such Self-Funding Participant Cash Payment. If payment of the Self-Funding Participant Cash Payment is made within such grace period, such Participant will be treated as a Self-Funding Participant.

5.5.3 The Sites Authority will deposit each Self-Funding Participant Cash Payment in an individual account or accounts for each Self-Funding Participant established and held by the Sites Authority separate and apart from the Sites Authority’s other funds and accounts, and shall apply such amount, including the investment earnings thereon, to pay such Self-Funding Participant’s share of the cost of the applicable Fixed Project Costs in accordance with Section 6.5 or to pay costs of any refinancing, as applicable. Such accounts and any investments shall be held in compliance with Applicable Law.

5.5.4 In the event that the Self-Funding Participant Cash Payment is not received prior to the expiration of the grace period described in Section 5.5.2, such Participant shall constitute a Financing Participant with respect to such Sites Financing and be obligated to pay Sites Financing Costs relating to such Sites Financing.

5.5.5 To the extent a Self-Funding Participant meets its obligation under this Contract to pay Fixed Project Costs through Self-Funding Participant Cash Payments, such Participant hereby represents, warrants, and covenants that such Self-Funding Participant Cash Payments shall and will be delivered to the Sites Authority free and clear of any prior lien.

5.5.6 At the time of disbursement of any proceeds of Project Obligations, as reasonably practicable, there will be a disbursement of proceeds from the accounts holding the Self-Funding

Participant Cash Payments made by Self-Funding Participants, and in each instance, the disbursement of proceeds of Project Obligations and the disbursement of proceeds from the accounts holding the Self-Funding Participant Cash Payments made by the Self-Funding Participants shall be made proportionately based on each such Participant's Capacity Interest. In the event that a Participant is both a Financing Participant and a Self-Funding Participant, the allocation of the proceeds of Project Obligations and the disbursement from the account holding such Participant's Self-Funding Participant Cash Payment to the payment of such Participant's share of Fixed Project Costs, will be made in proportion to the Participant cash payment and the Participant Fixed Project Costs to be financed from the proposed Sites Financing identified in such Participant's Self-Funding Notice relative to the Total Participant Obligation set forth in such Participant's Self-Funding Notice; provided that if a Participant that is both a Financing Participant and a Self-Funding Participant elects to increase its self-funded portion of Fixed Project Costs after the Self-Funding Election Date pursuant to Section 5.4.2, the amounts used to determine the allocation between the proceeds of Project Obligations and disbursements from the account holding such Participant's Self-Funding Participant Cash Payment will be adjusted to take into account the increase to such Participant's self-funded portion of Fixed Project Costs.

5.5.7 If, following (i) Completion or (ii) to the extent a Participant elects to self-fund its share of Fixed Project Costs of additional Project Facilities following Completion, the completion of the additional Project Facilities funded, in part, with a Sites Financing that such Participant elected not to participate in, there is any portion of any Self-Funding Participant Cash Payments (and investment earnings thereon) remaining unspent by the Sites Authority, then such unspent Self-Funding Participant Cash Payments (including investment earnings thereon) shall be returned by the Sites Authority to the applicable Self-Funding Participants, or, at the written direction of each such Self-Funding Participant shall be paid to the Sites Authority and credited to future Fixed Project Costs of the applicable Self-Funding Participant under this Contract.

SECTION 6. PAYMENT OF PROJECT COSTS

6.1 Overview of Project Costs

6.1.1 Subject to Section 6.1.2, each Participant shall be required to pay Project Costs as follows:

- (a) Financing Obligations as set out in Section 6.4 for Financing Participants;
- (b) Fixed Project Costs, calculated in accordance with Section 6.5;
- (c) Fixed O&M Costs, calculated in accordance with Section 6.6; and
- (d) Variable O&M Costs, calculated in accordance with Section 6.7.

6.1.2 In the case of the SWP Participants, the Acquirer shall be required to pay all Project Costs to Sites Authority under this Section 6, on behalf of the SWP Participants.

6.1.3 Notwithstanding Section 6.1.2, to the extent any amounts paid to the Sites Authority by the Acquirer are insufficient to cover the Project Costs required to be paid by the SWP Participants, the SWP Participants shall pay to the Sites Authority all remaining Project Costs as described in this Contract.

6.2 Estimated Charges

6.2.1 On or before July 1 of each Fiscal Year or such other date agreed in the Sites Authority Policies, Sites Authority shall provide (i) each Participant, and (ii) the Acquirer and the SWP Participants, in the case of the SWP Participants ((i) and (ii) together, to be referred to as the “**Billing Party(ies)**”) with an estimated statement of anticipated Project Costs required to be paid by each Participant or the Acquirer (as applicable) in the following Fiscal Year under this Contract, which statement may be used by Participants for budgeting purposes.

6.2.2 In accordance with the timing required by the JPA Agreement, the Reservoir Committee shall prepare and recommend, and the Sites Authority Board will adopt a budget for Project Costs for the following Fiscal Year.

6.3 Billing Statements

6.3.1 Within 30 days after the Effective Date and thereafter, on or before [January][1] and [July][1] of each Fiscal Year or such other dates as may be provided in the Sites Authority Policies, the Sites Authority will provide each Billing Party with a billing statement (“**Billing Statement**”) setting forth:

- (a) from the Effective Date until the termination of this Contract, for Financing Participants, for the Participant’s share of the Participant’s Financing Obligations due for the applicable six-month period, calculated in accordance with Section 6.4;
- (b) from the Effective Date until the termination of this Contract, for Self-Funding Participants, for the Participant’s share of Fixed Project Costs due for the applicable six-month period, calculated in accordance with Section 6.5; provided, to the extent all or a portion of such costs have been self-funded with a Self-Funding Cash Payment, then such amounts shall be deducted from the applicable account established for the respective Self-Funding Participants in accordance with Section 6.8.1(b);
- (c) from twelve months prior to completion of construction of the Project until the termination of this Contract, for all Participants, the Participant’s share of Fixed O&M Costs, due for the applicable six-month period calculated in accordance with Section 6.6; and
- (d) from six months prior to completion of construction of the Project until the termination of this Contract, for all Participants, the Participant’s share of Variable O&M Costs due for the applicable six-month period calculated in accordance with Section 6.7.

6.3.2 Project Costs billed to each Participant and included on any Billing Statement shall be billed as follows:

- (a) Fixed O&M Costs, Financing Obligations and Fixed Project Costs shall be billed one-year in advance; and
- (b) Variable O&M Costs shall be billed for the applicable six-month period commencing on the succeeding [January][1] or [July][1], or such other dates set out in the Sites Authority’s fiscal policies.

6.3.3 Each Billing Statement shall:

- (a) be consistent with the approved Sites Authority budget;
- (b) be based upon Project Costs incurred by the Sites Authority during the current Fiscal Year and planned Project Costs for the upcoming Fiscal Year;
- (c) take into account estimated Water storage and delivery requested and the storage and conveyance projections provided by the Participants in the Storage Opportunity Request Form;
- (d) take into account applicable credits received by the Sites Authority and estimated investment earnings on moneys related to the Project held by the Sites Authority, provided that amounts paid to the Sites Authority for Fixed Project Costs shall not be invested at a yield or in any manner which would result in interest on any Project Obligations being includable in gross income for federal income tax purposes; and
- (e) be accompanied by reasonable supporting documentation showing the basis of the Project Costs shown on the Billing Statement.

6.4 Financing Obligations

Each Financing Participant's Financing Obligations shall be determined in accordance with the following formula:

$$FO = [BFO \times BFPP] + [DFO \times DFPP]$$

Where:

FO = Financing Obligations

BFO = Financing Obligations allocable to Base Facilities

DFO = Financing Obligations allocable to Downstream Facilities

BFPP = Base Facility Financing Participation Percentage

DFPP = Downstream Facility Financing Participation Percentage

6.5 Fixed Project Costs

Each Participant's Fixed Project Costs, shall be determined in accordance with the following formula:

$$FPC = [BFC \times BCI] + [DFC \times DCI]$$

Where:

FPC = Participant Fixed Project Costs

BFC = Fixed Project Costs allocable to Base Facilities

DFC = Fixed Project Costs allocable to Downstream Facilities

BCI = Each Participant’s Base Facilities Capacity Interest

DCI = Each Participant’s Downstream Facilities Capacity Interest,

in any case to the extent that such Fixed Project Costs are not also included in such Participant’s Financing Obligations.

6.6 Fixed O&M Costs

Each Participant’s Fixed O&M Costs shall be determined in accordance with the following formula:

$$FOMC = [BFOMC \times BCI] + [DFOMC \times DCI]$$

Where:

FOMC = Fixed O&M Costs

BFOMC = Fixed O&M Costs allocable to Base Facilities

DFOMC = Fixed O&M Costs allocable to Downstream Facilities

BCI = Each Participant’s Base Facilities Capacity Interest

DCI = Each Participant’s Downstream Facilities Capacity Interest

6.7 Variable O&M Costs

Each Participant’s Variable O&M Costs shall be determined in accordance with the following formula:

$$VOMC = [(PWP / TWP) \times BVMOC] + [(PWR/TWR) \times DVOMC]$$

Where:

VOMC = Variable O&M Costs

TWP = Total water conveyed into Sites Owned Facilities

Participant PWP = Water conveyed into Sites Owned Facilities attributable to a

TWR = Total water released from Sites Owned Facilities

Participant PWR = Water released from Sites Owned Facilities attributable to a

BVOMC = Variable O&M Costs allocable to Base Facilities

DVOMC = Variable O&M Costs allocable to Downstream Facilities

6.8 Time and Method of Payments by Participants

6.8.1 Within 30 days after receipt of each Billing Statement and in the manner set out in the Sites Operations Plan:

- (a) each Financing Participant, or the Acquirer in the case of the SWP Participants, shall pay the charges for Project Costs shown on the Billing Statement; and
- (b) each Self-Funding Participant, or the Acquirer in the case of the SWP Participants, shall pay the charges for Project Costs shown on the Billing Statement (which shall reflect such Self-Funding Participant's Self-Funding Participant Cash Payments). The Sites Authority shall withdraw from Self-Funding Participant Cash Payments on deposit in the account established for such Self-Funding Participant the Fixed Project Costs that such Self-Funding Participant has elected to self-fund in accordance with the applicable Self-Funding Election.

6.8.2 Each Participant, or the Acquirer in the case of the SWP Participants, shall make payments under this Contract whether or not the Project is completed or operable and notwithstanding the suspension, interruption, interference, reduction or curtailment of operation of the Project or of water service in whole or in part for any reason.

6.8.3 Payments under this Contract by each Participant, or the Acquirer in the case of the SWP Participants, or withdrawals from any account established for a Self-Funding Participant are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by Sites Authority or any other Participant under this Contract or any other agreement.

6.8.4 The obligation of each Participant, or the Acquirer in the case of the SWP Participants, to make payments under this Contract (including Financing Obligations with respect to each Financing Participant) is absolute, irrevocable and unconditional irrespective of: (i) any change in the time, manner or place of payment of its obligations under this Contract (including the terms in Section 6.8.1 of this Contract and the Sites Operations Plan) or any other amendment or waiver of or any consent to departure from any of the terms of this Contract, the Sites Operations Plan or the Project Obligations; (ii) any release or amendment or waiver of, or consent to departure from, any State and Federal Contract, (iii) any taking, exchange, sale or release of any collateral, for any Project Obligation or any manner of application of collateral, or proceeds thereof, to any Project Obligation; (iv) any change, restructuring or termination of the existence of the Sites Authority or any Participant; (v) any present or future law, regulation or order of any jurisdiction or of any agency thereof purporting to increase, reduce, amend, restructure or otherwise affect any term of this Contract or the Project Obligations; and (vi) any other setoff, defense or counterclaim whatsoever with respect to this Contract, the Project Obligations or the transactions contemplated thereby which may constitute a legal or equitable defense available to, or discharge of, the Sites Authority or any Participant.

6.8.5 Each Participant shall:

- (a) not be liable under this Contract for the obligations of any other Participant; and
- (b) be solely responsible and liable for performance of its obligations under this Contract.

6.8.6 The obligation of each Participant, or the Acquirer in the case of the SWP Participants, to make payments under this Contract is a several obligation and not a joint obligation with those of the other Participants.

6.9 Interest on Late Payments

6.9.1 Any amount of the Project Costs billed in a Fiscal Year by the Sites Authority under this Section 6, which remains unpaid 30 days after the due date in Section 6.8.1, as applicable, shall bear interest from such day at the per annum interest rate equal to the then-current rate on the Local Agency Investment Fund (LAIF) until paid.

6.9.2 Interest paid under Section 6.9.1 by a Financing Participant shall not change the Financing Participation Percentage of such Financing Participant, but shall be applied to the payment of Sites Financing Costs of all Financing Participants other than the Financing Participant paying such interest in accordance with the applicable Financing Agreement.

6.10 Annual True-Up

6.10.1 No later than 180 days after the end of each Fiscal Year, the Sites Authority will evaluate the Project Costs paid by or deducted from the deposit made by each Participant, or the Acquirer in the case of the SWP Participants, under this Contract against the actual Project Costs for the Fiscal Year and will credit any overpayment by any Participant, or the Acquirer in the case of the SWP Participants, to such Participant's or the Acquirer's payment for the following Fiscal Year; provided, however, that to the extent any Project Costs have not been finally determined within 180 days after the end of a Fiscal Year, following the final determination of such Project Costs, the Sites Authority will promptly, and in no case later than 60 days after finalization of Project Costs, credit any overpayment by any Participant, or the Acquirer in the case of the SWP Participants, to such Participant's or the Acquirer's payment for the following Fiscal Year.

6.11 Supplemental Billing

6.11.1 Billing Statements sent to each Billing Party will be based on the factors identified in Section 6.3. In the event that the amounts paid by the Participants, or the Acquirer in the case of the SWP Participants, are insufficient to pay the actual Project Costs, as applicable, for the applicable Fiscal Year, the Sites Authority may issue additional Billing Statements to the Billing Parties apportioned in accordance with the terms in this Section 6, and such amounts will be due and payable by the Participants, or the Acquirer in the case of the SWP Participants, within 30 days after receipt of such Billing Statement; provided, however, that the Sites Authority shall not issue additional Billing Statements for any charges 3 years or more after the underlying costs for such additional Billing Statements were incurred by Sites Authority, unless the Sites Authority did not know, and would not have known through exercise of reasonable care, that such underlying costs would require additional Billing Statements during such 3 year period.

6.11.2 If the Sites Authority becomes aware of circumstances which may result in the need to issue supplemental Billing Statements to the Billing Parties, the Sites Authority will notify the Billing Parties of such circumstances as promptly as reasonably possible.

6.12 Contest of Accuracy of Charges

If a Participant questions or disputes the correctness of any Billing Statement by the Sites Authority, it shall pay the Sites Authority the amount claimed when due and shall within 30 days

after receipt of such Billing Statement request an explanation from the Sites Authority. If the bill is determined to be incorrect, the Sites Authority will adjust the bill to such Participant in the next applicable Billing Statement. If the Sites Authority and the Participant fail to agree on the correctness of a bill within 30 days after the Participant has requested an explanation, the Sites Authority and such Participant shall resolve the dispute in accordance with Section 12.

SECTION 7. SITES AUTHORITY FINANCIAL COVENANTS

7.1.1 The Sites Authority will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Project, which records shall be available for inspection by each Participant, upon at least 2 Business Days written notice, at reasonable hours and under reasonable conditions.

7.1.2 The Sites Authority will prepare within 270 days after the close of each Fiscal Year (commencing with the Fiscal Year ending [December 31, 2024]) financial statements of the Sites Authority for the preceding Fiscal Year prepared in accordance with Generally Accepted Accounting Principles, together with an accountant's report on such financial statements. The Sites Authority will promptly furnish a copy of such accountant's report to each Participant.

7.1.3 The Sites Authority will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Master Resolution required to be observed and performed by the Sites Authority and shall apply amounts received from the Participants in accordance with this Contract in accordance with the Master Resolution.

SECTION 8. LEASING OR SALE OF CAPACITY AND SALES OF WATER

8.1 Sharing, Lease or Sale of Capacity Interest by Participants

8.1.1 Participants may share, lease, or sell all or a portion of their Capacity Interest with other Participants and with other entities subject to the following conditions:

- (a) each Participant may negotiate in their discretion the commercial terms of storage sharing, leasing, or sale of the Capacity Interest ("**Negotiated Terms**") provided that:
 - (i) the Negotiated Terms must not negatively impact other Participants' rights to store or convey Water in accordance with this Contract;
 - (ii) any sharing, leasing, or sale of Capacity Interest must be consistent with the Sites Water Right, Governmental Approvals and Applicable Law;
 - (iii) subject to Sections 8.1.2 and 8.1.3, a sharing, lease or sale of the Capacity Interest shall not impact or limit a Participant's rights or obligations to Sites Authority under this Contract and each Participant shall remain responsible for all obligations towards the Sites Authority under this Contract;
 - (iv) Participants are not prohibited from leasing all or a portion of their Capacity Interest to generate revenue to help cover Project Costs;

(v) any sale of a Participant's Capacity Interest cannot cause or be construed to cause a reduction in any Project Obligation bond rating as reasonably determined by the Sites Authority; and

(vi) prior to any sale by a Participant of Capacity Interest, the selling Participant shall provide to the Sites Authority such information and documents as reasonably requested by the Sites Authority, except for any commercial terms which may be held confidential in accordance with Applicable Law, and such sale must be approved by the Reservoir Committee and the Sites Authority (as applicable) consistent with this Section 8.1.1(a) and the Sites Authority Bylaws;

- (b) any sharing, leasing or sale of Capacity Interest will be coordinated with the Sites Authority so that proper Project operations and Water accounting may be maintained;
- (c) any sale or lease agreement for Capacity Interest must specify how conveyance constraints will limit withdrawals from the Project Facilities and how Project Facilities losses will be accounted for; and such provisions shall be consistent with the Sites Operations Plan and any other requirements established by the Reservoir Committee and the Sites Authority;
- (d) as a condition of any Participant selling or leasing all or a portion of its Capacity Interest, the Participant must first pay any amounts due to the Sites Authority under this Contract; and
- (e) where a Participant proposes to sell or lease Capacity Interest to a non-Participant, and receives a bona fide offer for the same, the selling Participant must first provide written notice of such offer ("**Offer Notice**") to the other non-selling Participants holding a Capacity Interest in the same Project Facilities (the Base Facilities or the Downstream Facilities, as applicable) including a term sheet with all material terms of the proposed sale or lease. The Participants shall have a "right of first refusal" with respect to the sale or lease of such Capacity Interest on the terms provided in the Offer Notice. Each Participant shall respond to such terms in the time and manner described in the Sites Operations Plan, and a failure to respond in the required time or manner shall be deemed a waiver of such Participant's right to first refusal with regard to the transaction set forth in the Offer Notice. If the terms presented to the Participants in the Offer Notice are changed in any material way following provision of the Offer Notice to the non-selling Participants, the selling Participant will provide a revised Offer Notice and the non-selling Participants shall again have a "right of first refusal" on the new terms in the revised Offer Notice. In the event that more than one non-selling Participant timely notifies the Selling Participant of such non-selling Participants' interest in purchasing or leasing the Capacity Interest upon the terms set forth in the Offer Notice, the Capacity Interest shall be apportioned *pro rata* based on the non-selling Participants' applicable Capacity Interest in each of the Base Facilities and Downstream Facilities unless the non-selling Participants agree otherwise. While the Sites Authority may act in an administrative role with respect to such sales or leases, the Sites Authority will not have any authority to set prices or terms except as set forth in Section 8.1.1(a).

8.1.2 In the event that a Participant leases or shares its Capacity Interest as described in Section 8.1.1(a), such leasing or sharing Participant shall remain liable and responsible for all

of its obligations under this Contract, and shall not be relieved of any such obligations as a result of such lease or sharing.

8.1.3 In the event that a Participant sells all or a portion of its Capacity Interest as described in Section 8.1.1(a), such selling Participant shall remain liable and responsible for all of its obligations under this Contract until such time as the Sites Authority has received an executed purchase agreement for the Capacity Interest, and the purchaser has assumed all such obligations of the Participant under this Contract in a form and content reasonably satisfactory to the Reservoir Committee or the Sites Authority (as applicable) in accordance with the Sites Authority Bylaws.

8.2 Sites Water Sales

8.2.1 Participants may sell Sites Water allocable to such Participants to other Participants or other entities. The terms of sales of Sites Water are at the discretion of the Participant, provided that:

- (a) sale terms must not negatively impact other Participants' rights to store or convey Water as set out in the Sites Operations Plan;
- (b) any sale of Sites Water will be coordinated with the Sites Authority so that proper Project operations and Water accounting may be maintained; and
- (c) a Participant may not transfer or assign its Capacity Interest or any other rights or obligations under this Contract as part of any Sites Water sale, except as set forth in Section 8.1.

8.3 Maintenance of Tax-Exempt Status of Project Obligations

Notwithstanding any other provision of this Contract, no Participant shall transfer, share, assign, sell or exchange any portion of its Capacity Interest, directly or indirectly, in any manner, or take or permit to be taken any other action or actions, which would result in any of Project Obligations being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such Project Obligations as a "private activity bond" within the meaning of Section 141 of said Code or for any other reason; provided, however, that in the event a Sites Financing is accomplished under terms that make the Interest thereon subject to federal income taxation, the foregoing restrictions will be inapplicable to the portion of the Project so financed.

SECTION 9. MODIFICATIONS FOR CAPITAL IMPROVEMENTS

9.1 Subject to Section 9.2, the Sites Authority or any Participant may request capital improvements to provide an added benefit to the Project. Such capital improvements shall be subject to approval by the Sites Authority and the Participants in accordance with Section 4.12. The Sites Authority will prepare and distribute a document detailing the anticipated Project Costs and benefits of the proposed capital improvements.

9.2 Participants may not opt out of necessary capital improvements required to maintain initial Project functions and that provide benefits initially contemplated for the Project.

9.3 In the event that such proposed capital improvements are not approved in accordance with Section 4.12, a subset of Participants may elect to continue with the capital improvements. Those Project Costs and benefits associated with such capital improvements shall be allocated only to the subset of Participants electing to proceed with the capital improvements in accordance with an agreement among the Sites Authority and such Participants.

SECTION 10. DEFAULT

10.1 Written Demand

10.1.1 If a Participant fails to (i) make any payment in full when due under this Contract or (ii) perform any other obligation under this Contract, the Sites Authority shall make written demand upon such Participant. If a failure described in this Section 10.1.1 is not remedied within 30 days from the date of such demand, such failure shall constitute a default at the expiration of such period; provided that if a failure described in Section 10.1.1(ii) cannot be remedied within 30 days from the date of such demand but (A) the defaulting Participant commences remedial action within such 30-day period and diligently pursues the remedy of such default until the remedy is complete and (B) such failure is remedied within 90 days from the date of the initial demand, such failure shall not constitute a default under this Contract. Notice of any such demand shall be provided to each other Participant by the Sites Authority.

10.1.2 Upon failure of the Sites Authority to perform any obligation of the Sites Authority under this Contract, a Participant may make written demand upon the Sites Authority. If such failure is not remedied within 30 days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to all other Participants by the Participant making such written demand.

10.1.3 In addition to any default resulting from breach by the Sites Authority or a Participant of any agreement, condition, covenant or term of this Contract, if the Sites Authority or a Participant files any petition or institutes any proceedings under any law, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such law, either as a bankrupt, as an insolvent, as a debtor or in any similar capacity, wherein and whereby the Sites Authority or a Participant asks or seeks or prays to be adjudicated as bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the Sites Authority or a Participant shall make a general or any assignment for the benefit of its creditors, then, in each and every such case, the Sites Authority or such Participant, as applicable, shall be deemed to be in default under this Contract.

10.2 Suspension or Termination of Rights; Continuing Obligations

10.2.1 Upon the occurrence and continuance of a default as provided in Section 10.1.1 or in Section 10.1.3, Reservoir Committee or the Sites Authority Board (as applicable), may give notice of suspension or termination of the defaulting Participant's:

- (a) right to participate or vote as a member of the Reservoir Committee;
- (b) Capacity Interest in such Storage Partner's Stored Water and such Participant's right to convey additional Water; and / or

- (c) right to the services obligated to be provided by the Sites Authority relating to the operation of the Sites Project, as provided in the Sites Operations Plan,

which notice shall be effective within 30 days after receipt unless such termination or suspension shall be enjoined, stayed or otherwise delayed by judicial action. The Sites Authority Board shall make determinations under this Section 10.2 pertaining to the Sites Authority Board and the Reservoir Committee, and the Reservoir Committee shall make determinations under this Section 10.2 pertaining to the Reservoir Committee. In the event of a suspension under this Section 10.2.1, the suspension shall remain in effect until the default has been cured to the reasonable satisfaction of the Sites Authority Board or the Reservoir Committee, as applicable, and notice of such cure and termination of the suspension has been provided to the Participant.

10.2.2 Irrespective of such suspension or termination, the defaulting Participant shall remain liable to the Sites Authority to pay the full amount of Project Costs allocated to such Participant in accordance with Section 6; provided that the Sites Authority shall act reasonably and in good faith to mitigate any damages caused by such Participant's default.

10.3 Disposition of Defaulting Participant's Capacity Interest, Interest in Water and Right to Convey Additional Water

10.3.1 Upon a default and the termination of such Participant's Capacity Interest in accordance with Section 10.2.1(b), the Sites Authority shall use its best efforts to facilitate a transfer, for such Participant's account, of all or a portion of the Participant's Capacity Interest, interest in Water and right to convey additional Water (the "**Defaulted Interests**") for all or a portion of the remainder of the term of this Contract.

10.3.2 The other non-defaulting Participants holding a Capacity Interest in the same Project Facilities (the Base Facilities and/or the Downstream Facilities, as applicable) shall have a "right of first offer" to assume all or a portion of the defaulting Participant's Defaulted Interests and that Participant's related obligations under this Contract, at a price mutually agreed between the defaulting Participant and the Participants purchasing all or a portion of the defaulting Participant's Defaulted Interests. In the event that more than one non-defaulting Participant wishes to acquire the Defaulted Interests on the same terms, the Defaulted Interests shall be apportioned *pro rata* based on the non-defaulting Participants' applicable Capacity Interest in each of the Base Facilities and/or Downstream Facilities unless the non-defaulting Participants agree otherwise.

10.3.3 In the event that the Sites Authority is unable to transfer all of the defaulting Participant's Capacity Interest, interest in Water and right to receive additional Water to other non-defaulting Participants in accordance with Section 10.3.2, the Sites Authority may make such Defaulted Interests available to entities other than the non-defaulting Participants, and may enter into an agreement with such entities for the purchase of all or a portion of the defaulting Participant's Defaulted Interests and the assumption of the related obligations under this Contract.

10.3.4 Notwithstanding any other provisions of this Contract, and to the extent applicable, the Sites Authority shall not sell or transfer any portion of a defaulting Participant's Defaulted Interests, directly or indirectly, in any manner that would adversely affect the exclusion from gross income of interest on any Sites Financing for federal income tax purposes.

10.3.5 In the event that the Sites Authority is unable to enter into an agreement with entities for the purchase of all or a portion of the defaulting Participant's Defaulted Interest and

the assumption of the related obligations under this Contract under Section 10.3.3, the Defaulted Interests shall be apportioned *pro rata* based on the remaining non-defaulting Participants' applicable Capacity Interest in each of the Base Facilities and/or the Downstream Facilities unless the non-defaulting Participants agree to an alternative apportionment of such Defaulted Interests, resulting in a proportional increase in each Participant's Capacity Interest and the related rights and obligations in connection with such Capacity Interest.

10.3.6 Notwithstanding that all or any portion of the defaulting Participant's Capacity Interest, interest in Water and right to convey additional Water is so transferred, such Participant shall remain liable to the Sites Authority to pay the full amount of its share of costs under this Contract as if such sale or transfer has not been made, except that such liability shall be discharged to the extent that the Sites Authority shall receive payment from the transferee thereof for that share of costs.

10.4 Enforcement of Remedies

10.4.1 In addition to the other remedies set forth in this Section 10, upon the occurrence of an event of default in accordance with this Contract, any Party shall be entitled to proceed to protect and enforce the rights vested in such Party by this Contract by such appropriate judicial proceeding as such Party shall deem most effectual, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such Party by this Contract or by law. The provisions of this Contract and the duties of each Party, their respective boards, officers or employees shall be enforceable by the other Participants and the Sites Authority by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the losing Party paying all costs and attorney fees of the prevailing Party.

10.4.2 Without limiting the generality of the foregoing, the Sites Authority or the Participants, as applicable, shall have the right to bring the following actions:

- (a) Accounting. By action or suit in equity to require the Sites Authority Board or the Participants, its officers and employees and its assignee to account as the trustee of an express trust.
- (b) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Sites Authority or a Participant, as applicable.
- (c) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce its rights against the other Party hereto (and its board, officers and employees) and to compel the other Party hereto to perform and carry out its duties and obligations under the law and its covenants and agreements as provided herein.

10.5 Waiver

10.5.1 The waiver by (i) the Sites Authority of any breach by a Participant, or (ii) the Participants of any breach by the Sites Authority, of any agreement, condition, covenant or term under this Contract shall not operate as a waiver as to any Participant or the Sites Authority of any subsequent breach of the same or any other agreement, condition, covenant or term under this Contract.

SECTION 11. TERMINATION

11.1 Termination Prior to Completion of the Project

11.1.1 In the event that any of the conditions precedent to construction in Section 3.2 are not satisfied on or before ____, 202__, the Sites Authority may terminate this Contract. This Section 11.1.1 shall have no further force or effect if such conditions precedent are finalized on or before such date.

11.1.2 Without limiting Section 11.1.1, this Contract may be terminated before Completion of the Project in the following manner:

- (a) If the Sites Authority and the Reservoir Committee determine, in accordance with Section 4.12 (including as provided in Section 3.1), that the Project will be terminated before Completion because of infeasibility, impracticality, inability, failure of the Participants to fund the Project as provided in Section 6, or failure of the Sites Authority to construct the Project as provided in Section 3, the Sites Authority shall adopt a resolution to wind-up the Project (a “**Wind-Up Resolution**”).
- (b) Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites Authority shall first offer to sell the Project Assets to the Participants (excluding the Partner Facilities), at a fair market value as determined by a majority of a panel of three licensed appraisers, including (i) any partially constructed or completed physical works or assets that divert Sites Water into or release Sites Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests, or obligations related to the Project. If any Participants accept such offer for any or all of the offered interests, then the Sites Authority and such purchasing Participants shall work in good faith to close upon the sale of such interests within 180 days after the appraiser panel’s determination of fair market value.
- (c) Upon adoption of a Wind-Up Resolution by the Sites Authority, the Sites Authority shall appoint a winding-up agent (the “**Winding-Up Agent**”). The Winding-Up Agent shall, upon expiration of the time for the Participants to accept the offer described in Section 11.1.2(b), prepare a plan for disposition of the Project Assets, which shall include plans for mitigating or remediating any hazardous or unsafe conditions located on the Project site that are a direct result of the construction of the Project, and upon approval of the Sites Authority, implement the disposition of the Project Assets in accordance with the plan for disposition, including the disposition of unexpended and unobligated funds of the Sites Authority and the Participants. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents then held by the Sites Authority shall first be used, based on the Capacity Interest, to pay the following amounts in the following order of priority (i) repay debts of the Sites Authority incurred for funding the Project; provided, however, that any moneys contributed by a Self-Funding Participant and held at the time of a winding-up shall not be used to repay debts of the Sites Authority incurred for funding the Project, (ii) pay the costs of mitigating or remediating hazardous or unsafe conditions located on the Project site pursuant to the plan for disposition of the Project Assets, and (iii) distribute cash to the Participants that had satisfied their capital funding obligations in accordance with Section 6. Any remaining funds shall then be distributed to the Participants based

on their proportional respective Capacity Interests. Subject to the Sites Authority Records Management Policy, Participants shall be entitled to copies of any work products developed by the Sites Authority or its consultants on behalf of the Participants, and the Sites Authority shall convey to the Participants, as tenants in common with all other Participants who are not in default of this Contract, a pro rata interest based on the Participant's Capacity Interests in all real and personal property remaining after implementation of the plan for disposition of the Project Assets in accordance with this Section 11.1.

- (d) Upon completion of the winding-up process described in this Section 11.1, the Sites Authority shall adopt a resolution of termination of the Project. Upon the adoption of such resolution, all Capacity Interests shall be terminated.

SECTION 12. DISPUTE RESOLUTION

12.1 Informal Dispute Resolution before Mediation

12.1.1 The Participants and the Sites Authority agree to undertake good faith efforts to resolve any dispute arising in connection with this Contract within 60 days after the date that notice of such dispute is provided in writing prior to resorting to formal means of dispute resolution, including disputes related to the Sites Operations Plan.

12.1.2 If any dispute is not capable of resolution by and among the representatives of the Participants and Sites Authority authorized to administer this Contract, the authorized representative of the applicable Participants and the Sites Authority's Board Chair or his/her authorized representative (who shall be the Executive Director of the Sites Authority or a member of the Sites Authority Board) shall meet and confer in an effort to resolve any such dispute.

12.1.3 If such efforts between the applicable Participants' principals and the Sites Authority's designee do not resolve the dispute within 30 days after their commencement, the applicable Participants and the Sites Authority shall have such other remedies available to them as are provided for in this Contract or as otherwise exist at law or in equity.

12.1.4 No other means of dispute resolution, including mediation, arbitration and litigation, shall be available to the Participants and the Sites Authority unless they have exhausted the process provided for in this Section 12.1.

12.2 Mediation

12.2.1 If a dispute arises among one or more Participant and the Sites Authority relating to or arising from a Party's obligations under this Contract that cannot be resolved through informal discussions and meetings as described in Section 12.1, the Parties involved in the dispute shall be required to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation shall be commenced by sending a notice of demand for mediation to the other Parties involved in the dispute.

12.2.2 A single mediator that is acceptable to all Parties involved in the dispute shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this

Contract, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed-upon mediator.

12.2.3 The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All mediation costs, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be equally shared by the Parties to the dispute unless otherwise directed by the mediator.

12.3 Conduct of Mediation

12.3.1 Mediation will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions and any offers to compromise during the proceedings will be confidential to the proceedings (pursuant to California Evidence Code §§ 1115—1128; 1152) and will not be used for any other purpose unless otherwise agreed by the applicable Parties in writing. The applicable Parties may agree to exchange any information they deem necessary.

12.3.2 The Parties involved in the dispute shall have representatives attend the mediation who are authorized to settle the dispute, though a recommendation of settlement may be subject to the subsequent approval of each Participant's and the Sites Authority's boards or legislative bodies. Any involved Party may have attorneys, witnesses or experts present.

12.3.3 Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties to the dispute. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

12.4 Nothing in this Section 12 shall relieve the Parties from performing their obligations under this Contract. The Parties shall be required to comply with this Contract, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this Contract.

12.5 Any offers to compromise before or after mediation proceedings will not be used to prove a Party's liability for loss or damage unless otherwise agreed by the Parties in writing (pursuant to California Evidence Code §1152).

SECTION 13. LIABILITY

13.1 Sites Authority Liability

Any and all obligations of the Sites Authority that may arise under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the Sites Authority. Nothing in this Contract shall be deemed to prevent the Sites Authority from making any payments from any other legally available source. In no event shall the Sites Authority be required to spend any money from revenue from taxes, assessments, fees or charges in violation of Applicable Law or Governmental Approvals in the performance of its obligations under this Contract. The obligations of the Sites Authority under this Contract do not constitute a debt or indebtedness of the Sites Authority within the meaning of any constitutional or statutory provision or limitation, and shall not be considered or held to be a general obligation of the Sites Authority.

13.2 Participant Liability

In no event shall any Participant be required to spend any money from taxes in violation of Applicable Law or Governmental Approvals in the performance of its obligations under this Contract.

13.3 Consequential Damages

No Participant shall be liable to another Participant or to the Sites Authority, and the Sites Authority shall not be liable to the Participants, for consequential, indirect, punitive, or special damages arising under this Contract.

SECTION 14. INSURANCE

14.1 The Sites Authority will procure and maintain or cause to be procured and maintained, at a minimum, the following insurance with responsible insurers in such amounts and against such risks (including damage to or destruction of the Project Assets) as are usually covered in connection with facilities that are similar to the Project Assets (so long as such insurance is commercially available from reputable insurance companies at reasonable rates): (a) insurance on the Project Assets, excluding coverage for earthquake damage or destruction; (b) workers' compensation insurance in statutorily-prescribed amounts; and (c) commercial general liability insurance covering against claims of bodily injury and property damage. The Participants shall be named as additional insureds under all insurance policies maintained pursuant to this section.

SECTION 15. MISCELLANEOUS

15.1 Relationship of Parties

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

15.2 Severability

15.2.1 If any provision or part of this Contract 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 Contract to account for any change in the services rendered in accordance with this Contract 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.

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

15.3 Notices

15.3.1 Any notices required or permitted under this Contract 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 email communication, in each case addressed to the respective Parties at the addresses indicated in the Project Specific Information. Notice required to be given to all Participants under this Contract shall be given to the addresses indicated in the Project Specific Information or to such other addresses as the Participants may provide to the Sites Authority and the other Participants from time to time.

15.3.2 Any Participant may from time to time change the address to which notice may be provided by providing notice of the change to the Sites Authority who will update the address in the Project Specific Information to reflect such change.

15.4 Other Agreements Not Prohibited

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

15.5 Assignment

15.5.1 The Sites Authority may pledge and assign to any trustee for bonds or other Financing Agreements, all or any portion of the payments received under this Contract from each Participant (other than payments from a Self-Funding Participant) and the Sites Authority's other rights and interests under this Contract. Such pledge and assignment by the Sites Authority shall be made effective for such time as the Sites Authority shall determine and provide that the trustee shall have the power to enforce this Contract in the event of a default by the Sites Authority under a Financing Agreement.

15.5.2 Except as otherwise provided in Section 15.5.1, the rights, titles, and interests of any Party to this Contract shall not be assignable or transferable without the consent of the Sites Authority and the governing body of each Party to this Contract.

15.6 Section Headings

The section headings in this Contract 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 Contract.

15.7 Governing Law and Venue

This Contract shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law, the JPA Agreement, the Sites Authority Bylaws 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.

15.8 Construction of Language

It is the intention of the Parties to this Contract that if any provision of this Contract 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.

15.9 Successors

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

15.10 Enforcement

The Participants and the Sites Authority are hereby authorized to take any and all legal or equitable actions, including an injunction and specific performance, necessary or permitted by law to enforce this Contract.

15.11 Integration

This Contract, together with its incorporated documents and references, constitute the entire agreement and understanding of the Parties and supersedes all prior agreements and understanding between the Parties relating to the subject matter of this Contract. Except as expressly provided in this Contract, this Contract may not be interpreted, modified or changed by reference to other documents, understandings or agreements, whether written or oral, unless the interpretation, modification or change is subsequently agreed to in writing by the Parties to this Agreement.

15.12 Amendment

15.12.1 Except as otherwise may be provided in this Contract, including Section 3.6, neither this Contract nor any provision under this Contract may be modified or amended except with the written consent of (1) the Sites Authority, (2) at least 75% of the Participants, and (3) Participants that collectively hold at least 75% of the Base Facilities Capacity Interest; provided, however, that:

- (a) if any Financing Agreement is outstanding, any amendment to this Contract will be subject to the terms and conditions set forth in any such Financing Agreement;
- (b) this Contract may not be amended without a Participant’s written consent if the Contract is to be amended in a manner that results in a material adverse impact on the rights of such Participant under this Contract to control its Capacity Interest or have Water diverted into, stored in, or released from the Project Facilities under its Capacity Interest on a pro-rata and substantially similar basis with other Participants; and
- (c) this Contract may not be amended in a manner that would cause the Sites Authority to violate Applicable Law or provisions of any Governmental Approvals.

15.12.2 If at any time a Party believes that, due to any significant change in circumstances, compliance with this Contract by such Party would produce grossly inequitable

results or subject it to financial hardship of extraordinary magnitude, such Party may by written notice call on the Reservoir Committee to review and discuss the effects of such change of circumstances. Within 30 days after receipt of such notice, the Reservoir Committee shall meet to consider how to deal with such inequities or hardship in a manner which is fair for all Parties in view of all changes and circumstances, and shall attempt to eliminate promptly any such inequity or hardship through good faith negotiations. If the Parties agree on a method to eliminate such inequity or hardship, then this Contract shall be amended in accordance with Section 15.12.1, as appropriate, except as provided in Section 15.12.3.

15.12.3 The Sites Authority shall enforce the provisions of this Contract and duly perform its covenants and agreements contained in this Contract. The Sites Authority will not consent or agree to or permit any rescission of or amendment to or otherwise take any action under or in connection with this Contract which will in any manner materially impair or materially adversely affect the rights of the Sites Authority under this Contract or the rights of the members of the Reservoir Committee.

15.13 Authorization and Opinion

15.13.1 Each Participant attaches to this Contract a true and correct copy of such Participant's records authorizing the officers, whose names appear on this Contract, to enter into this Contract.

15.13.2 Each Participant further attaches an opinion of an attorney or firm of attorneys as described in Section 2.1.1(b).

15.14 Counterparts

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

15.15 No Third-Party Beneficiaries

15.15.1 All of the covenants contained in this Contract are for the express benefit of each Party, and any Participant shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other Participants hereunder. Except as provided by this Section 15.15, this Contract is not intended to benefit any third parties, and any other third-party beneficiaries are expressly disclaimed.

15.15.2 Notwithstanding Section 15.5.1, any Lender shall have the right as a third-party beneficiary to initiate and maintain suit to enforce this Contract to the extent provided in any Project Obligations or Financing Agreement.

15.16 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 Contract, and that the decision of whether or not to seek the advice of counsel with respect to this Contract is a decision which is the sole responsibility of each of the Parties. This Contract is the product of negotiation and therefor shall not be construed against any Party.

15.17 Compliance with Laws and Financing Agreements

The Participants and Sites Authority shall comply will all Applicable Law, Governmental Approvals and requirements of the Financing Agreements.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed and attested by their proper officers duly authorized on the day and year set forth below, making this Contract effective on the Effective Date.

**SITES PROJECT JOINT POWERS
AUTHORITY**

By: _____
Name:
Title:

[INSERT PARTICIPANT]

By: _____
Name:
Title:
Capacity Interest:

[INSERT PARTICIPANT]

**STATE OF CALIFORNIA DEPARTMENT
OF WATER RESOURCES**

By: _____
Name:
Title:

By: _____
Name:
Title:
Capacity Interest:

[INSERT PARTICIPANT]

[INSERT PARTICIPANT]

By: _____
Name:
Title:
Capacity Interest:

By: _____
Name:
Title:
Capacity Interest:

APPENDIX 1

DEFINITIONS

Unless the context otherwise requires, definitions for certain capitalized acronyms, abbreviations and terms used in this Contract have the meanings given in this Appendix 1.

Acre-foot: Means 43,560 cubic feet of water.

Acquirer: Means DWR, acting as acquirer of Sites Water from the Project in accordance with California Water Code § 11575 and/or other Applicable Law on behalf of the SWP Participants and otherwise responsible for performing the functions set out in Section 4.14 of this Contract on behalf of the SWP Participants.

Applicable Law: Means applicable federal, state and local laws, ordinances, rules, regulations, orders, and policies relating to the Project, including CEQA and NEPA and operation of area of origin statutes.

Approved Design Documents: Means for each of the anticipated Sites Owned Facilities, the most recently approved submittal of the Design Documents or final Design Documents prepared by the applicable designer and approved by the Sites Authority.

Base Facilities: Means the Sites Owned Facilities or other facilities available to all Participants including those listed in the Project Specific Information, as modified from time to time.

Base Facilities Capacity Interest: Means the Capacity Interest of each Participant in the Base Facilities specified in the Project Specific Information.

Billing Party(ies): Has the meaning given in Section 6.2.1.

Billing Statement: Has the meaning given in Section 6.3.

Business Day: Means a day other than (i) a Saturday or Sunday, (ii) a day which Sites Authority offices are officially closed, and/or (iii) a day which banks are not required or authorized by law to be closed in the State of California.

Capacity Interest: Means the undivided capacity right of each Participant to store, convey and divert Sites Water in each of the Base Facilities and Downstream Facilities granted by the Sites Authority and owned by the Participants in accordance with Section 3.5, and in the pro-rata share set out for each Participant in the Project Specific Information and subject to the Sites Water Right, Applicable Law and Governmental Approvals.

CEQA: Means the California Environmental Quality Act.

CEQA / NEPA Approval: Means the environmental approvals for CEQA and NEPA or each of them as the context requires. CEQA Approval was developed and adopted or certified by the Sites Authority on November 17, 2023.

Completion: Means the determination by the Sites Authority Board and the Reservoir Committee that the Project Facilities are complete for the purposes of providing water service, including water storage, intake, outlet, and conveyance, to Participants.

Contract: Means this Sites Reservoir Benefits & Obligations Contract, including all Appendices and Exhibits as described in Section 1.1.1, as such Contract may be modified from time to time in accordance with this Contract.

Defaulted Interest: Has the meaning given in Section 10.3.1.

Delivery Point: Means with respect to each Participant, the delivery point specified in the Project Specific Information.

Design Documents: Means all drawings (including plans, elevations, sections, details and diagrams), specifications, reports, calculations, records and submittals developed by the applicable designer as necessary for design of each Sites Owned Facility.

Downstream Facilities: Means the Sites Owned Facilities or other facilities that are utilized by selected Participants listed in the Project Specific Information, as modified from time to time.

Downstream Facilities Capacity Interest: Means the Capacity Interest of each Participant applicable to the Downstream Facilities specified in the Project Specific Information.

DWR: Means the State of California Department of Water Resources.

Effective Date: Has the meaning given in Section 2.1.1 and specified in the Project Specific Information.

Environmental Law: Means (1) all Applicable Law now or hereafter in effect regulating, relating to, or imposing liability or standards of conduct concerning the environment or the generation, production, emissions, discharges, storage, use, handling, transportation, treatment, disposal, remediation, releases or threatened releases of hazardous materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances, or materials into the environment including into the air, surface water or ground water or onto land, and (2) any requirements and standards that pertain to the protection of the environment, or to the management of hazardous materials or generation, production, emissions, storage, use, handling, transportation, treatment, disposal, remediation, discharges, releases or threatened releases of hazardous materials or other hazardous, toxic or dangerous waste, pollutants, contaminants, substances or materials into the environment, contamination of any type whatsoever, or health and safety matters with respect to Hazardous Materials, identified in any Governmental Approval, or (3) other criteria and guidelines promulgated, in accordance with Applicable Law, as each of the foregoing have been or are amended, modified, or supplemented from time to time.

Final EIR: Has the meaning given in Recital C to this Contract.

Financing Agreements: Means any indenture, trust agreement, loan agreement, installment purchase agreement or other financing document entered into by the Sites Authority in connection with any Project Obligations.

Financing Obligations: Means the obligation of a Financing Participant to pay a percentage of the total Sites Financing Costs in accordance with Section 6.4. The amount of each Participant's

Financing Obligations for any Sites Financing will be set out in separate line items in the Project Specific Information, which line items Sites Authority may update from time to time as needed.

Financing Participant: Means, with respect and to the extent a Participant participates in a Sites Financing, all Participants other than Self-Funding Participants.

Financing Participation Percentage:

Means, with respect to each Sites Financing, the applicable percentage determined in accordance with the following formula:

$$FPP = [PFPC / TFPC]$$

Where:

FPP = Applicable Base Financing Participation Percentage or Downstream Financing Participation Percentage

TFPC = Total Fixed Project Costs to be funded with proceeds of a Sites Financing

PFPC = Participant's Fixed Project Costs to be funded with proceeds of a Sites Financing

The amount of each Financing Participant's Base Financing Participation Percentage and Downstream Financing Participation Percentage that is applicable to each Sites Financing will be determined by the Sites Authority Board at the time of such Sites Financing and shall be reflected in the Project Specific Information.

Fiscal Year: Means the period beginning on January 1 of each calendar year and ending on the last day of December of such calendar year, or any other accounting period hereafter selected and designated by the Sites Authority as the Fiscal Year of the Sites Authority.

Fixed O&M Costs: Means (1) all costs, calculated in accordance with Generally Accepted Accounting Principles, incurred by Sites Authority (i) to administer, operate, maintain, power, repair, replace, and, to the extent that reserves are available, rehabilitate and improve, the Project, (ii) attributable to the conveyance and storage of water in the Sites Owned Facilities excluding pumping costs, carriage costs, and power interference costs; (iii) for Sites Authority defense or other legal costs, including payment of claims, settlements or judgments (iv) to meet regulatory requirements associated with the Project; including administrative and legal costs of the Sites Authority, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the Sites Authority, or charges required to be paid by it to comply with the terms of the Financing Agreements or this Contract; and (2) amounts required for compliance with Sections 3.2 and 3.5 of the Master Resolution or any similar provisions thereof; but excluding in all cases (A) depreciation, replacement and obsolescence charges or reserves for such costs, (B) amortization of intangibles or other bookkeeping entries of a similar nature, (C) costs of capital additions, replacements, betterments, extensions or improvements to the Project, which under Generally Accepted Accounting Principles are chargeable to a capital account or to a reserve for depreciation and (D) Sites Financing Costs, in each case incurred by the Sites Authority with respect to the Project. Fixed O&M Costs are incurred irrespective of the amount of Water diverted, stored or released to the Participants. Fixed O&M Costs include any and all costs and expense

that are not Fixed Project Costs, Sites Financing Costs or Variable O&M Costs that may accrue to Sites Authority after execution of this Contract. Fixed O&M Costs exclude any such costs paid under the State and Federal Contracts.

Fixed Project Costs: Means (i) development, design, construction and capital costs of the Project, and (ii) individual repair, replacement, rehabilitation, improvement, or regulatory compliance activities incurred after Completion to the extent not covered by Fixed O&M Costs. Fixed Project Costs exclude any such costs paid under the State and Federal Contracts.

Fixed Project Cost Funding Obligation: Means, with respect to each Participant, such Participant's obligation to fund Fixed Project Costs, calculated in accordance with Section 6.5.

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

Generally Accepted Accounting Principles: Means such accepted accounting practice as conforms at the time to generally accepted accounting principles to public agencies in the United States of America, consistently applied.

Good Industry Practice: Means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced designer, engineer, constructor, supplier, operator or maintenance provider, as applicable, operating in the United States under the same or similar circumstances and conditions, seeking in good faith to comply with its contractual obligations, this Contract and all Applicable Law and Governmental Approvals in conformance with applicable professional engineering principles, construction, operations and maintenance practices generally accepted as standards of the industry in the State.

Governmental Approval: Means any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, agreement or memorandum of agreement/understanding, and any revision, modification, amendment, supplement, renewal or extension of any of the foregoing, required by or with any Governmental Entity in order to perform the purposes of this Contract.

Governmental Entity: Means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than the Sites Authority.

Interim Agreements: Means previously executed agreements between the Participants and the Sites Authority under which Participants agreed to pay a pro rata portion, based on participation percentages, for the operation, maintenance, legal, administrative, improvement, and other costs of developing the Project before execution of this Contract, as listed in the Project Specific Information.

JPA Agreement: Means the Fifth Amended and Restated Joint Exercise of Powers Agreement, effective [___], 202[___], by and among the parties set forth on the execution page thereof, as amended and supplemented from time-to-time.

LAIF: means the Local Agency Investment Fund of the State.

Lender: Means any lender, bondholder, noteholder, lessee or other holder of any Project Obligations (including the State of California, the United States of America, or any department, bureau or other affiliated entity thereof), as applicable, incurred in connection with a Sites Financing of the Project.

Master Resolution: Means the Sites Authority Resolution Providing for the Prioritization of Use for Project Revenues, approved and adopted by the Sites Authority, as supplemented and amended from time to time.

Negotiated Terms: Has the meaning given in Section 8.1.1(a).

NEPA: Means the National Environmental Policy Act.

Offer Notice: Has the meaning given in Section 8.1.1(e).

O&M Costs: Means Fixed O&M Costs and Variable O&M Costs, or either of them, as the context requires.

Participants: Means the entities listed in the Project Specific Information, including any successor or any assignee of such Participant permitted in accordance with Section 15.9.

Parties: Means each of the Participants, the Sites Authority and the Acquirer, or any of them, as the context requires.

Partner Agreements: Means any agreement entered into between the Sites Authority and another entity in accordance with which the Sites Authority has the right to convey Water to or from the Project, as amended from time to time. The list of Partner Agreements as of the Effective Date is included in the Project Specific Information.

Partner Facilities: Means any facilities used by the Sites Authority to convey Water to, or from, the Sites Owned Facilities in accordance with the Partner Agreements, and as further described in Exhibit 1 to Appendix 2.

Project: Means the entire physical infrastructure and capital improvements to be designed, constructed, commissioned and completed or contracted for use by the Sites Authority, including the Sites Owned Facilities and the Partner Facilities, as reflected in the Project Specific Information, for the purpose of providing storage and conveyance of water for use by Participants in accordance with their Capacity Interest, as such project may be modified from time to time.

Project Assets: Means all of the tangible and intangible assets relating to the Project, including (i) the Project Facilities, (ii) all real property determined by the Authority to be required for construction or operation of the Project, (iii) rights over the Project Facilities in the form of license, right-of-way or otherwise, (iv) tangible assets such as foundations, buildings, pavements, works, and equipment, (v) the Sites Water Right, and (vi) all Governmental Approvals.

Project Costs: Means the sum of Fixed O&M Costs, Fixed Project Costs, Variable O&M Costs and Sites Financing Costs payable by the Participants under this Contract, or each of them, as the context requires.

Project Facilities: Means collectively the Sites Owned Facilities and the Partner Facilities, or any of them as the context requires, and as further described in Exhibit 1 to Appendix 2.

Project Specific Information: Means Appendix 2 to this Contract, as modified from time to time in accordance with this Contract.

Project Obligations: Means any bonds, notes, loans or other evidences of indebtedness issued or incurred by or on behalf of the Sites Authority with respect to the Project.

Proposed Sites Financing Incurrence Date: Has the meaning given in Section 5.2.1.

Proposition 1 Water Storage Investment Program Contract: Means the agreements between Sites Authority and the State anticipated to be titled [Proposition 1 Water Storage Investment Program Contract for Administration of Public Ecosystem Benefits and Proposition 1 Water Storage Investment Program Contract for Administration of Public Recreation and Flood Control Benefits], setting out [] and anticipated to be dated on or about the date of this Contract.

Reclamation Partnership Agreement: Means the agreement between Sites Authority and the United States of America anticipated to be titled Reclamation Partnership Agreement setting out [] and anticipated to be dated on or about the date of this Contract.

Release Request Form: Has the meaning given in Section 4.4.

Reservoir Committee: Means the Reservoir Committee of the Sites Authority, established by the JPA Agreement, as such Reservoir Committee may be modified from time to time.

Revenue Fund: Means the fund by that name established by the Sites Authority in accordance with the Master Resolution.

Self-Funding Election Date: Has the meaning given in Section 5.4.

Self-Funding Notice: Has the meaning given in Section 5.4.

Self-Funding Participant: Means a Participant that satisfies all or a portion of its obligation to pay Fixed Project Costs through Self-Funding Participant Cash Payments in accordance with Section 5.4. A Participant is a Self-Funding Participant to the extent that it satisfies its Fixed Project Cost Funding Obligation through Self-Funding Participant Cash Payments, and then only for the term of any payments of Fixed Project Costs using proceeds from Self-Funding Participant Cash Payments made by such Participant.

Self-Funding Participant Cash Payment: Has the meaning given in Section 5.5.2.

Sites Authority: Has the meaning given in Recital A of this Contract.

Sites Authority Accounting Policy: Means the Accounting Policy, initially dated [___], [], as such policy may be modified from time to time.

Sites Authority Bylaws: Means the Phase 3, 4, 5 Bylaws of the Sites Project Authority, adopted by the Sites Authority Board in connection with its adoption of the JPA Agreement, as amended or supplemented from time to time.

Sites Authority Policies: Means those policies and guidelines adopted by the Sites Authority and listed in the Project Specific Information, as such policies may be modified from time to time.

Sites Authority Records Management Policy: Means the Records Management Policy, initially dated [___], [___] as such policy may be modified from time to time.

Sites Authority Reserve Policy: Means the WIFIA Reserve Policy, or a successor policy, initially dated [___], [___], as such policy may be modified from time to time.

Sites Financing: Means a financing by Sites Authority of Fixed Project Costs through the incurrence of Project Obligations on behalf of the Financing Participants participating in the applicable financing.

Sites Financing Costs: Means any and all costs associated with a Sites Financing, including (a) the principal of and interest, including default interest incurred in connection with a Sites Financing, on all Project Obligations, (b) fees payable to Lenders and others related to the issuance and administration of a Sites Financing, and (c) reserves required in connection with the incurrence of Project Obligations, if any.

Sites Financing Incurrence Notice: Has the meaning given in Section 5.2.1.

Sites Operations Plan: Means the Sites Reservoir Operations Plan, initially dated ____, 2024, as such Sites Operations Plan may be modified from time to time in accordance with Sites Authority Policies. The initial form of the Sites Operations Plan approved by the Reservoir Committee and the Sites Authority (as applicable) in accordance with the Sites Authority Bylaws is included as Appendix 8.

Sites Owned Facilities: Means the new physical infrastructure and capital improvements for the Project to be designed, constructed, commissioned, completed and owned by the Sites Authority, including dams, reservoir(s), pipelines, pump stations, and other facilities necessary or appropriate for providing new water supply and storage including the facilities listed in the Project Specific Information, but excluding facilities designed and built by parties to Partner Agreements that will be used for the Project in accordance with such Partner Agreements, Partner Facilities and the real property required for the Project, and as further described in Exhibit 1 to Appendix 2.

Sites Water: Means water that is appropriated under the Sites Water Right.

Sites Water Right: Means the water right obtained and owned by the Sites Authority for the Project.

State: Means the State of California, including applicable departments and agencies thereof.

State and Federal Contracts: Means the Proposition 1 Water Storage Investment Program Contract and the Reclamation Partnership Agreement, or each of them as the context requires,

State and Federal Operations Agreement: Means the [Sites/DWR/Reclamation Coordinated Operations Agreement], dated ____, [2024], as such State and Federal Operations Agreement may be modified from time to time.

Storage Allocation: Means the maximum actual capacity allocated to a Storage Partner for storing Water in the Project Facilities, as measured and determined from time to time by the Sites Authority in accordance with the Sites Authority Accounting Policy.

Storage Opportunity Request Form: Has the meaning given in Section 4.4.

Storage Partners: The governmental agencies, water organizations and others who have funded and received a Storage Allocation in Sites Reservoir and the resulting water supply or water supply related benefits from the Project. Storage Partners could include Participants, the State, and the United States of America.

Storage Partner's Stored Water: Means the amount of Water that a Storage Partner has stored in the Project Facilities at any given time, as measured from time to time by the Sites Authority in accordance with the Sites Authority Policies.

SWP Participants: Means those Participants listed in the Project Specific Information which have elected to pay Project Costs through the Acquirer in connection with the California State Water Project.

United States of America: Means the United States of America, including applicable departments and agencies thereof.

Variable O&M Costs: Means the operation, maintenance, power (including pumping), carriage costs, power interference costs, replacement and other costs, including O&M Costs and costs and expenses, including funding of reserves in accordance with Sites Authority Policies, to the Sites Authority under this Contract and wheeling costs [on a per Acre-foot basis] to account for the use of Partner Facilities, and incurred by the Sites Authority in connection with the Project in an amount which is dependent upon and varies with the amount of Sites Water diverted, stored or released from the Project Facilities to the Participants. Variable O&M Costs exclude any such costs paid under the State and Federal Contracts.

Water: Means water conveyed through, or stored by, Participants in Project Facilities.

Wind-Up Resolution: Has the meaning given in Section 11.1.2.

Winding-Up Agent: Has the meaning given in Section 11.1.2.

APPENDIX 2

PROJECT SPECIFIC INFORMATION

<p>Effective Date Section 2.1.2</p>	<p>[_] [Note: To be inserted as of the signature and delivery date of the last executing and delivering Participant under Section 2.1.1]</p>
<p>Base Facilities Appendix 1</p>	<ul style="list-style-type: none"> ▪ Sites Reservoir ▪ Sites Dam ▪ Golden Gate Dam ▪ Sites saddle dams/dikes ▪ Terminal Regulating Reservoir ▪ Terminal Regulating Reservoir Pumping Generating Plant ▪ Funks Reservoir ▪ Glenn Colusa Irrigation District Main Canal ▪ Tehama-Colusa Canal ▪ Funks Pumping Generating Plant ▪ Power transmission lines ▪ Electrical substations ▪ Sites Lodoga Bridge ▪ Other support facilities <ul style="list-style-type: none"> • Pipelines (Terminal Regulating Reservoir, Funks) • Maxwell Intertie Pipeline • Inlet/outlet tower • Transition manifold • Maintenance and storage building • Administration and operations building • Recreation areas including day use boat ramp
<p>Downstream Facilities Appendix 1</p>	<ul style="list-style-type: none"> ▪ Dunnigan Pipeline and associated energy dissipation facility ▪ Colusa Basin Drain south of Balsdon Weir ▪ Knights Landing Outfall Gates ▪ Knights Landing Ridge Cut ▪ Wallace Weir
<p>Partner Agreements Appendix 1</p>	<ul style="list-style-type: none"> ▪ Partner Agreement between Sites Authority and Tehama-Colusa Canal Authority, dated [_]. ▪ Partner Agreement between Sites Authority and Glenn-Colusa Irrigation District, dated [_].
<p>Sites Owned Facilities</p>	<ul style="list-style-type: none"> ▪ Sites Reservoir ▪ Sites Dam ▪ Golden Gate Dam

	<ul style="list-style-type: none"> ▪ Sites saddle dams/dikes ▪ [Terminal Regulating Reservoir] ▪ Terminal Regulating Reservoir Pumping Generating Plant ▪ Funks Pumping Generating Plant ▪ Other support facilities <ul style="list-style-type: none"> • Pipelines (Terminal Regulating Reservoir, Funks) • Maxwell Intertie Pipeline • Inlet/outlet tower • Transition manifold • Maintenance and storage building • Administration and operations building • Recreation areas including day use boat ramp ▪ Dunnigan Pipeline and associated energy dissipation facility 			
<p>Interim Agreements</p>	<ul style="list-style-type: none"> ▪ Phase 1 Project Agreement dated November 21, 2016 ▪ 2019 Reservoir Project Agreement dated April 1, 2019 ▪ First Amendment to 2019 Reservoir Project Agreement dated January 1, 2020 ▪ Second Amendment to 2019 Reservoir Project Agreement dated July 1, 2020 ▪ Third Amendment to 2019 Reservoir Project Agreement dated January 1, 2022 			
<p>Sites Authority Policies Appendix 1</p>	<ul style="list-style-type: none"> ▪ Accounting Policy, dated [July 26, 2022] ▪ Accounts Payable Approval Policy, dated [May 2, 2022] ▪ Budget Policy, dated [December 16, 2022] ▪ Debt Management Policy, dated [November 21, 2022] ▪ Funding and Credit Reimbursement Policy, dated [August 3, 2020] ▪ Investment Policy, dated [May 19, 2023] ▪ Procurement and Contract Policy, dated [December 16, 2022] ▪ Real Property and Land Management Policy, dated [May 25, 2022] ▪ Records Management Policy, dated [December 16, 2022] ▪ [WIFIA Reserve Policy], dated [November 21, 2022] ▪ Local CEQA Guidelines, dated [March 25, 2019] 			
<p>Non-Participant Parties and Address for Notices Section 15.3</p>	<p>Party</p>	<p>Notice Details</p>		
	<p>Sites Authority</p>	<p>[INSERT NOTICE DETAILS]</p>		
	<p>DWR</p>	<p>[INSERT NOTICE DETAILS]</p>		
<p>Participants, Address for Notices and Delivery Point Section 15.3</p>	<p>Participant</p>	<p>Notice Details</p>	<p>Delivery Point</p>	<p>Payment Election</p>
	<p>Antelope Valley-East Kern WA</p>	<p>[INSERT NOTICE DETAILS]</p>	<p>[TO BE INSERTED]</p>	<p>[Statement of Charges]</p>
	<p>City of American Canyon</p>	<p>[INSERT NOTICE DETAILS]</p>	<p>[TO BE INSERTED]</p>	<p>[Rates and Charges]</p>

	Coachella Valley WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	Colusa County	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Colusa County WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Cortina WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Davis WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Desert WA	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	Dunnigan WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Glenn-Colusa ID	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	Irvine Ranch WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	LaGrande WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Metropolitan Water District of SC	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	Reclamation District 108	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]

	Rosedale-Rio Bravo WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	San Bernadino Valley Municipal WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	San Gorgonio Pass WA	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	Santa Clara Valley WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	Santa Clarita Valley WA	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	Westside WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Wheeler Ridge – Maricopa WSD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Payment Source Set Forth in Appendix 7C-2]
	Zone 7 WA	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
SWP Participants Section 4.14	Antelope Valley-East Kern WA Coachella Valley WD Desert WA San Bernadino Valley Municipal WD San Gorgonio Pass WA Santa Clarita Valley Water Agency			
Sites Authority Payment Information Section 6.8	[] [Note: To be inserted]			
Participant Capacity Interest	Participant	Base Facilities Capacity Interest	Downstream Facilities Capacity Interest	

Sites Project Authority – Benefits & Obligations Contract – Sites Reservoir Project

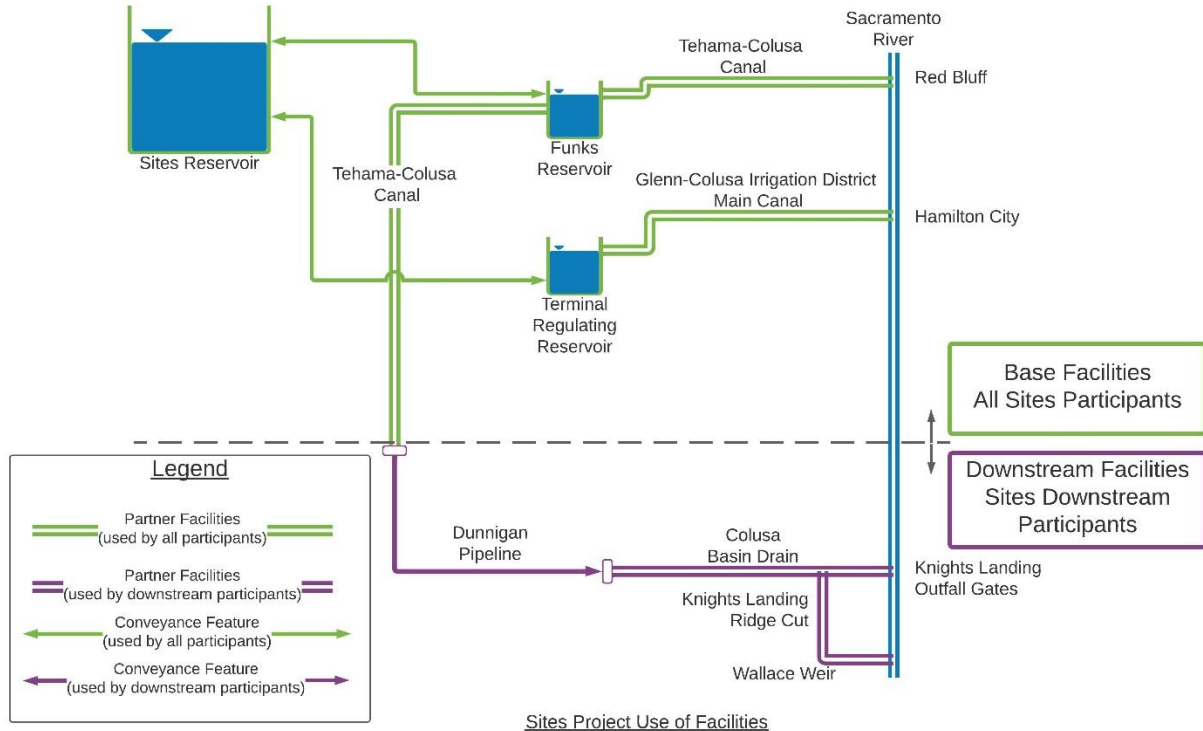
Appendix 1 [Note: Percentages to be completed based on the final financial model and commitments by Participants]	Antelope Valley-East Kern WA	0.20%	0.24%
	City of American Canyon	1.61%	1.92%
	Coachella Valley WD	4.03%	4.80%
	Colusa County	4.03%	
	Colusa County WD	3.73%	
	Cortina WD	0.18%	
	Davis WD	0.81%	
	Desert WA	2.62%	3.12%
	Dunnigan WD	1.20%	
	Glenn-Colusa ID	2.01%	
	Irvine Ranch WD	0.40%	0.48%
	LaGrande WD	0.40%	
	Metropolitan Water District of SC	20.14%	24.01%
	Reclamation District 108	1.61%	
	Rosedale-Rio Bravo WD	0.20%	0.24%
	San Bernadino Valley Municipal WD	8.62%	10.28%
	San Gorgonio Pass WA	5.64%	6.72%
	Santa Clara Valley WD	0.20%	0.24%
Santa Clarita Valley WA	2.01%	2.40%	
Westside WD	2.16%		

Sites Project Authority – Benefits & Obligations Contract – Sites Reservoir Project

	Wheeler Ridge – Maricopa WSD	1.23%	1.47%
	Zone 7 WA	4.03%	4.80%
Total		67.06%	60.72%
Sites Authority Reserved Interest Appendix 1	Party	Base Facilities Reserved Interest	Downstream Facilities Reserved Interest
	Sites Authority	32.94%	39.28%
Total with Participant Capacity Interest and Sites Authority Reserved Interest		100.00%	100.00%
Financing Participation Percentage Appendix 1 [Note: Financing Participation Percentage to be completed with each Sites Financing.]	Participant	Base Facilities Financing Participation Percentage	Downstream Facilities Financing Participation Percentage
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]

EXHIBIT 1 TO APPENDIX 2

PROJECT FACILITIES MAP



APPENDIX 3

FORM OF SELF-FUNDING NOTICE

SITES PROJECT AUTHORITY

NOITCE OF SELF-FUNDING ELECTION

_____, 20__

_____ (the “**Participant**”) is hereby providing the Sites Project Authority (the “**Sites Authority**”), notice in accordance with Section 5.4 of that certain Benefits & Obligations Contract (the “**Contract**”), dated _____, 20__, by and among the Sites Authority and the participants listed therein, including the Participant, of the Participant’s intention to self-fund [all] [a portion] of the obligated portion of the Fixed Project Costs of the Sites Project identified in the Notice of Proposed Sites Financing by the Sites Project Authority, dated ____, [20__] (the “**Incurrence Notice**”), delivered by the Sites Authority to the Participant (the “**Participant Fixed Project Costs**”). Unless the context otherwise requires, all capitalized terms acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

Set forth below is (i) the amount of the cash deposit that the Participant will deposit with Sites Authority to self-fund Participant Fixed Project Costs and (ii) the amount of the Participant Fixed Project Costs to be financed from the proceeds of the proposed Sites Financing, if any.

- A. Participant cash deposit: \$_____
- B. Participant Fixed Project Costs to be financed from the proposed Sites Financing: \$_____
- C. Total Participant Obligation: \$_____ [sum of A and B]

The Participant acknowledges that the amount specified in clause A above will need to be deposited with Sites Authority by no later than _____ (being the 60th day prior to the [Project Obligation Incurrence Date] [the Business Day prior to the scheduled date on which the offering document relating to the Sites Financing is to be made available to potential investors] set forth in the Incurrence Notice), as required by Section 5.4 of the Contract; subject to a grace period of 30 days following such date. If the Participant does not deposit the amount specified in clause A above with Sites Authority by the expiration of such grace period, the Participant acknowledges that the Participant will then be considered a Financing Participant with respect to the entire portion of the proposed Sites Financing allocable to the Participant and will be obligated to pay the related Sites Financing Costs.

Dated: _____, 20__

[Participant Name]

Sites Project Authority – Benefits & Obligations Contract – Sites Reservoir Project

By: _____
[Title of Officer]

APPENDIX 4

FORM OF SITES FINANCING INCURRENCE NOTICE

SITES PROJECT AUTHORITY

**NOTICE OF PROPOSED SITES FINANCING
BY THE SITES PROJECT AUTHORITY**

_____, 20__

The Sites Project Authority (the “Sites Authority”) is hereby providing the parties to the Benefits & Obligations Contract, dated ____, 20__, with the Sites Authority (the “Contract”), with notice of a proposed Sites Financing by the Sites Authority, as provided for in Section 5.2.1 of the Contract. Unless the context otherwise requires, all acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

- A. Type of Project Obligations: _____
- B. Aggregate principal amount of Project Obligations: \$_____
- C. Project components to be financed and/or refinanced: [list components]
- D. Proposed Sites Financing Incurrence Date: _____
- E. A description of the proposed financing structure, expected method of sale, expected term, pro-forma cash flows and each Participant’s estimated share of Fixed Project Costs to be financed or refinanced from the proposed Sites Financing is set forth in Schedule A hereto.
- F. Each Participant’s estimated annual Sites Financing Costs related to the proposed Sites Financing is set forth in Schedule B hereto.
- G. The amount of the cash deposit required to be made by each Participant if the Participant elects to self-fund such Project Costs in accordance with Sections 5.4 and 5.5 of the Contract is set forth in Schedule C hereto.

If a Participant intends for the Sites Authority to finance/refinance the Project components listed in clause C above, the Participant does not need to take any further action.

If a Participant intends to self-fund all or a portion of the applicable Project Costs described in clause E above such Participant must provide the Sites Authority with a Self-Funding Notice on or prior to ____, 20__ (on or before the 90th day prior to the anticipated [Sites Financing Incurrence Date] [the Business Day prior to the scheduled date on which the offering document relating to the Sites Financing is to be made available to potential investors]) all as provided in Section 5.4.2 of the Contract. A form of the Self-Funding

Sites Project Authority – Benefits & Obligations Contract – Sites Reservoir Project

Notice is attached to the Contract as Appendix 3. In addition, such Participant must deposit the amount of such self-funding with the Sites Authority by no later than _____, 20____, in accordance with Section 5.5.2 of the Contract; subject to a grace period of 30 days following such date.

[ADDITIONAL TEXT MAY BE ADDED AS NEEDED]

SITES PROJECT AUTHORITY

By: _____

[Title of Officer]

APPENDIX 5

FORM OF PARTICIPANT OPINION LETTER

[This opinion shall be delivered upon execution of the Sites Reservoir Benefits & Obligations Contract]

[], 202[]
Sites Authority
[ADDRESS]

[United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460]

Ladies and Gentlemen:

We are acting as [general/special] counsel to **[PARTICIPANT]** (the "Participant") in connection with the Sites Reservoir Benefits & Obligations Contract (the "Contract"), between the Sites Authority and Participant, and have acted as general counsel to the Participant in connection with the matters referred to in this opinion letter (this "Opinion"). As such counsel, we have examined and are familiar with (i) documents relating to the existence, organization and operation of the Participant provided to us by the Participant, (ii) certifications by officers of the Participant, (iii) all necessary documentation of the Participant relating to the authorization, execution and delivery of the Contract, and (iv) an executed counterpart of the Contract. Terms used herein and not otherwise defined have the respective meanings set forth in the Contract.

Based upon the foregoing and such examination of law and such other information, papers and documents as we deem necessary or advisable to enable us to render this opinion, including the Constitution and laws of the State of California, together with the resolutions, ordinances and public proceedings of the Participant, we are of the opinion that:

1. The Participant is a _____, duly created, organized and existing under the laws of the State of California and duly qualified to [furnish water service within its boundaries].
2. The Participant has legal right, power and authority to enter into the Contract and to carry out and consummate all transactions reasonably contemplated in or by the Contract, and the Participant has complied with the provisions of Applicable Law and Governmental Approvals relating to such transactions.
3. The Contract has been duly authorized, executed and delivered by the Participant, is in full force and effect as to the Participant in accordance with its terms and, subject to the qualifications set forth in the second to the last paragraph of this Opinion, and assuming

that the Sites Authority has all requisite power and authority, and has taken all necessary action, to authorize, execute and deliver such Contract, the Contract constitutes the valid and binding obligation of the Participant.

4. The obligations of the Participant to make payments under the Contract from the source of payment identified in Appendix 7[A][B][C-1][C-2] of the Contract, dated [], 2024, executed by the Participant, or other lawfully available funds as provided in the Contract is a valid, legal and binding obligation of the Participant enforceable in accordance with its terms.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Participant of the Contract.

6. The authorization, execution and delivery of the Contract and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Participant, any commitment, agreement or other instrument to which the Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to our knowledge, threatened against or affecting the Participant or any entity affiliated with the Participant or any of its officers in their respective capacities as such, which questions the powers of the Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Participant in connection with the authorization, execution or delivery of the Contract, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Contract, or which would adversely affect the validity or enforceability of the Contract.

[8. The Participant is not entitled to claim governmental immunity under the California Government Claims Act, or under any ordinance, regulation or other legislative action of the Participant in any breach of contract action under the Contract.]

The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Contract may be limited by any applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or other laws affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California and provided that no opinion is expressed with respect to any indemnification or contribution provisions contained therein.

Very truly yours,

APPENDIX 6

FORM OF SITES AUTHORITY OPINION LETTER

[This opinion shall be delivered to the Sites Authority upon execution of the Sites Reservoir Benefits & Obligations Contract]

[], 202[]

Sites Authority
[ADDRESS]

[United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460]

Ladies and Gentlemen:

We are acting as [special/general] counsel to the Sites Authority (the "Sites Authority") in connection with that certain Sites Reservoir Benefits & Obligations Contract, dated as of [], 202[] (the "Contract"), between the Sites Authority and each of the Participants identified on Exhibit 1 attached hereto (each a "Participant") in connection with the matters referred to in this opinion letter (this "Opinion"). As such counsel, we have examined and are familiar with (i) documents relating to the existence, organization and operation of the Sites Authority provided to us by the Sites Authority, (ii) certifications by officers of the Sites Authority, (iii) all necessary documentation of the Sites Authority relating to the authorization, execution and delivery of the Contract, and (iv) an executed counterpart of the Contract. Terms used in this Opinion and not otherwise defined have the respective meanings set forth in the Contract.

Based upon the foregoing and such examination of law and such other information, papers and documents as we deem necessary or advisable to enable us to render this Opinion, including the Constitution and laws of the State of California, together with the resolutions, ordinances and public proceedings of the Sites Authority, we are of the opinion that:

1. The Sites Authority is a joint exercise of powers agency, duly created, organized and existing under the laws of the State of California.
2. The Sites Authority has legal right, power and authority to enter into the Contract and to carry out and consummate all transactions contemplated in the Contract, and the Sites Authority has complied with the provisions of Applicable Law and Governmental Approvals relating to such transactions.

3. The Contract has been duly authorized, executed and delivered by the Sites Authority, is in full force and effect as to the Sites Authority in accordance with its terms and subject to the qualifications set forth in the second to the last paragraph of this Opinion, and assuming that each Participant has all requisite power and authority, and has taken all necessary action, to authorize, execute and deliver such Contract, the Contract constitutes the valid and binding obligation of the Sites Authority.

4. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Sites Authority of the Contract.

5. The authorization, execution and delivery of the Contract and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Sites Authority, any commitment, agreement or other instrument to which the Sites Authority is a party or by which it or its property is bound or affected, or, to the best of our knowledge, any ruling, regulation, ordinance, judgment, order or decree to which the Sites Authority (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Sites Authority and its affairs.

6. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to our knowledge, threatened against or affecting the Sites Authority or any of its officers in their respective capacities as such, which questions the powers of the Sites Authority referred to in paragraph 2 above or the validity of the proceedings taken by the Sites Authority in connection with the authorization, execution or delivery of the Contract, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Contract or which, in any way, would adversely affect the validity or enforceability of the Contract.

[7. The Sites Authority is not entitled to claim governmental immunity under the California Government Claims Act, or under any regulation or other legislative action of the Sites Authority in any breach of contract action under the Contract.]

The opinion expressed in paragraph 3 above is qualified to the extent that the enforceability of the Contract may be limited by any applicable bankruptcy, insolvency, reorganization, arrangement, moratorium, or other laws affecting creditors' rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California and provided that no opinion is expressed with respect to any indemnification or contribution provisions contained therein.

Very truly yours,

EXHIBIT 1 TO APPENDIX 6

Participants

[INSERT PARTICIPANT]

[INSERT PARTICIPANT]

[INSERT PARTICIPANT]

[INSERT PARTICIPANT]

APPENDIX 7
PAYMENT APPENDIX

Appendix 7A Rates and Charges

Appendix 7B Statement of Charges

Appendix 7C Land Based Charges

**APPENDIX 7A
RATES AND CHARGES**

This Appendix 7A (this “Appendix”) to the Benefits and Obligations Contract (the “Contract”), dated as of ____, 2024, by and between the entities listed in Appendix 2 to the Contract and the Sites Project Authority (the “Sites Authority”) sets forth the source of payment of the Participant executing this Appendix for amounts due to the Sites Authority in accordance with the Contract and certain other terms supplementary to the Contract.

Unless the context otherwise requires, all acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

A. Source of Payment. The Participant shall make payments under the Contract as an operation and maintenance expense of the Participant, as determined in accordance with Generally Accepted Accounting Principles, solely from, and prior to other payments other than operation and maintenance expenses, from the revenues of the Participant’s water system. Nothing in the Contract shall be construed as prohibiting the Participant from using any other funds for purposes of satisfying any provisions of this Contract.

B. Participant Rates and Charges. To the fullest extent permitted by law, the Participant will fix and prescribe, at the commencement of the fiscal year of the Participant (“**Participant Fiscal Year**”), rates and charges for the Participant’s water system which, together with any other lawfully available revenues of the Participant, and, if applicable, taking into account amounts transferred from a rate stabilization fund or other similar fund of the Participant, are reasonably expected to be sufficient to pay the Participant’s operation and maintenance expenses for such Participant Fiscal Year, including but not limited to amounts due to the Sites Authority under the Contract.

This Appendix is supplemental to the terms of the Contract, and, in the event of a conflict between the provisions of this Appendix and the provisions of the Contract, the terms of this Appendix shall govern.

Dated: _____, 202_

[PARTICIPANT]

By: _____

APPENDIX 7B
STATEMENT OF CHARGES

This Appendix 7B (this “Appendix”) to the Benefits and Obligations Contract (the “Contract”), dated ____, 2024, by and between the entities listed therein and the Sites Project Authority (the “Sites Authority”) sets forth the source of payment of the Participant executing this Appendix for amounts due to the Sites Authority pursuant to the Contract and certain other terms supplementary to the Contract.

Unless the context otherwise requires, all acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

A. Source of Payment. The Participant as a whole is obligated to pay to the Sites Authority the payments becoming due under the Contract, notwithstanding any individual default by its constituents or others in the payment to the Participant of assessments, tolls or other charges levied by the Participant.

If in any year the Participant fails or is unable to raise sufficient funds by other means, the governing body of the Participant shall levy upon property in the Participant not exempt from taxation, a tax or assessment (the “**SWP Tax**”) sufficient to provide for all payments under the Contract then due or to become due within that year and that appear on the statement of charges provided to the Participant by the State of California Department of Water Resources (“**DWR**”).

B. Enforcement of Collection of SWP Tax. To the fullest extent permitted by law and pursuant to the terms of the Participant’s Water Supply Contract with DWR, the Participant shall enforce and collect, or provide for the enforcement and collection of, the SWP Tax.

This Appendix is supplemental to the terms of the Contract, and, in the event of a conflict between the provisions of this Appendix and the provisions of the Contract, the terms of this Appendix shall govern.

Dated: _____, 2024

[PARTICIPANT]

By: _____

APPENDIX 7C
LAND BASED CHARGES

(See attached)

[LAND BASED CHARGES – DISTRICT APPENDIX]

APPENDIX 7C-1

LAND BASED CHARGES (DISTRICT IMPOSED)

This Appendix 7C-1 (this “Appendix”) to the Benefits and Obligations Contract (the “Contract”), dated as of ____, 2024, by and between the entities listed therein and the Sites Project Authority (the “Sites Authority”) sets forth the source of payment of the Participant executing this Appendix for amounts due to the Sites Authority pursuant to the Contract and certain other terms supplementary to the Contract.

Unless the context otherwise requires, all acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

A. Source of Payment. The Participant shall make payments under the Contract as an operation and maintenance expense of the Participant, as determined in accordance with Generally Accepted Accounting Principles. Such payments shall be paid from the revenues of the Participant’s water system, including any land based charges. Nothing in the Contract shall be construed as prohibiting the Participant from using any other funds for purposes of satisfying any provisions of this Contract.

B. Participant Revenues. To the fullest extent permitted by law, the Participant shall fix, prescribe and collect, at the commencement of the fiscal year of the Participant (the “Participant Fiscal Year”), rates and charges for the Participant’s water system which, together with any other lawfully available revenues of the Participant, and, if applicable, taking into account amounts transferred from a rate stabilization fund or other similar fund of the Participant, are reasonably expected to be sufficient to pay all amounts owed to the Sites Authority after the application of land based charges described in C below reasonably expected to be collected and applied as described in C below .

C. Participant Land Based Charges. During each Participant Fiscal Year, to the fullest extent permitted by law, the Participant shall levy and collect land based charges in an amount equal to 110% of the amount of the Participant’s Financing Obligations payable during such Participant Fiscal Year and shall apply such land based charges to the payment of the Participant’s Financing Obligations.

This Appendix is supplemental to the terms of the Contract, and, in the event of a conflict between the provisions of this Appendix and the provisions of the Contract, the terms of this Appendix shall govern.

Dated: _____, 2024

[PARTICIPANT]

By: _____

[LAND BASED CHARGES WRMWD APPENDIX]

APPENDIX 7C-2

LAND BASED CHARGES
(WHEELER RIDGE-MARICOPA WATER
STORAGE DISTRICT IMPOSED)

This Appendix 7C-2 (this “Appendix”) to the Benefits and Obligations Contract (the “Contract”), dated as of ____, 2024, by and between the entities listed therein and the Sites Project Authority (the “Sites Authority”) sets forth the exclusive source of payment of the Wheeler Ridge-Maricopa Water Storage District (“WRMWS”) and exclusive recourse for amounts due to the Sites Authority pursuant to the Contract and certain other terms supplementary to the Contract.

Unless the context otherwise requires, all acronyms, abbreviations and terms used in this Appendix have the meanings given in the Contract.

A. Source of Payment. WRMWS shall make payments due under the Contract solely (i) from special benefit assessments or charges in lieu of assessments (the “Assessments”) levied by WRMWS on certain parcels of land within WRMWS (the “Participating Properties”), the owners of which (the “Participating Landowners”) have executed agreements with WRMWS to participate in the Project (the “Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts”), pursuant to and as authorized by such Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts and applicable law, and (ii) from amounts received by WRMWS from the Participating Landowners for the provision of water service, water storage and other services with respect to the Project collected under the Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts (collectively, the “Pledged Landowner Revenues”). The Sites Authority shall not have the right of any recourse against the revenues, reserves or other assets of WRMWS or the Wheeler Ridge-Maricopa Groundwater Sustainability Agency (the “GSA”) or any revenues generated by WRMWS or the GSA from non-Sites related water service or groundwater management activities provided by WRMWS or the GSA, other than the Pledged Landowner Revenues. The Sites Authority’s recourse for the failure of WRMWS to pay WRMWS’s obligations under the Contract or to comply with the terms of the Contract will only be against the Pledged Landowner Revenues, including amounts received by WRMWS from WRMWS’s enforcement of the Assessments and the respective Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts.

B. Assessments. During each fiscal year of WRMWS (the “WRMWS Fiscal Year”), to the fullest extent permitted by law, WRMWS shall levy and collect Assessments in an amount equal to 110% of the amount of WRMWS’s Financing Obligations payable during such WRMWS Fiscal Year and shall apply such Assessments to the payment of WRMWS’s Financing Obligations.

C. Service Revenues. To the fullest extent permitted by law, WRMWS shall fix, prescribe and collect, during the WRMWS Fiscal Year, amounts under the Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts, which are reasonably expected to be sufficient to pay amounts coming due under the Contract (net of WRMWS

Financing Obligations that are reasonably expected to be paid with the proceeds of the Assessments) for such WRMWS D Fiscal Year.

D. Enforcement of Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts. WRMWS D shall at all times have Wheeler-Ridge Participating Benefits and Obligations Contracts in place with each of the Participating Landowners. To the fullest extent permitted by law, WRMWS D covenants and agrees that WRMWS D shall enforce the WRMWS D’s rights under each Wheeler-Ridge Participating Landowner Benefits and Obligations Contract against the respective Participating Landowners, collect amounts due in a timely manner and shall take all necessary actions permitted by the respective Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts, including the discontinuance of all Sites water to parcels of land owned by those specific Participating Landowners in default under the respective Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts, and by law to collect in such time and amounts Assessments and amounts payable pursuant to the Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts as shall permit WRMWS D to pay its obligations under the Contract in accordance with the terms of the Contract.

This Appendix is supplemental to the terms of the Contract, and, in the event of a conflict between the provisions of this Appendix and the provisions of the Contract, the terms of this Appendix shall govern.

Dated: _____, 2024

WHEELER RIDGE-MARICOPA
WATER STORAGE DISTRICT

By: _____

APPENDIX 8

INITIAL SITES OPERATIONS PLAN

[To be attached]

[Note: This Draft of the Joint Powers Agreement is being provided as a draft, and the terms reflected in this draft remain subject to further revision and negotiation among the parties involved.]

FIFTH AMENDED AND RESTATED
SITES PROJECT AUTHORITY
JOINT EXERCISE OF POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”) is made and entered into by and among Colusa County Water District (CCWD), County of Colusa (Colusa County), County of Glenn (Glenn County), Glenn-Colusa Irrigation District (GCID), Reclamation District 108 (RD 108), Tehama-Colusa Canal Authority (TCCA), Westside Water District (WWD), and Western Canal Water District (WCWD), jointly, Placer County Water Agency and City of Roseville (PCWA/Roseville), jointly, Sacramento County Water Agency and City of Sacramento, each referred to herein individually as an “Authority Member” or collectively as “Authority Members”.

RECITALS

The Authority Members are public entities located and operating in the Sacramento Valley, and are formed and operating under the laws of the State of California;

Congress and the State Legislature have declared that the Sacramento-San Joaquin Delta watershed and California’s water infrastructure are in crisis and they have encouraged regional and local public agencies to form joint powers authorities to improve the operation of the state’s water system;

Sites Reservoir has been identified by the State of California and the federal government as an important component of integrated water management in the Sacramento River watershed that could support the state’s co-equal policy to improve water management and restore the ecological health for beneficial uses of the Sacramento-San Joaquin Delta and the Sacramento River watershed;

The principal purpose of this Agreement is to establish an independent special agency, known as the Sites Project Authority (“Authority”), that will have as its mission, to be a proponent and facilitator to design, permit, acquire, construct, manage, govern, maintain and operate Sites Reservoir and related facilities (the “Project”);

Each Authority Member is uniquely authorized and situated with respect to the Project and the related facilities to help design, permit, acquire, construct, manage, govern, and operate the Project to provide local, regional, and statewide public benefits and improve the state’s water system;

Certain Authority Members executed the Memorandum of Understanding Between the Department of Water Resources, the United States Bureau of Reclamation, the Western Area

Power Administration, the California Department of Fish and Game, the United States Fish and Wildlife Service, the Glenn-Colusa Irrigation District, the Tehama-Colusa Canal Authority, and Other CalFed Agencies and Local Interests Pursuant to the Directive with Respect to Sites Reservoir Contained in the CalFed Bay-Delta program Programmatic Record of Decision, August 28, 2000;

In August 2010, Glenn-Colusa Irrigation District, Reclamation District 108, Tehama-Colusa Canal Authority, Maxwell Irrigation District, County of Glenn, County of Colusa, Yolo County Flood and Water Conservation District entered into an Agreement creating a public entity known as the Sites Project Authority.

In November of 2023, the Sites Project Authority approved for certification the Final EIR and associated Mitigation Monitoring and Reporting Program, which was jointly prepared with the Bureau of Reclamation's Final EIS which culminated in a Record of Decision being issued on XX;

The Authority expects to (i) obtain the Sites Water Right permit and critical state and federal permits covering the construction and operations of the Project, (ii) execute Benefits & Obligations Contracts with governmental entities related to their investment in the Project, and (iii) execute State and Federal Contracts with State and federal agencies for their participation in the Project;

Numerous changes in Authority membership have occurred since 2010, and the current membership of the Authority is reflected in the opening paragraph of this Agreement.

By this Fifth Amended and Restated Agreement, the Authority Members wish to establish the terms and conditions governing the Authority's functions during the final design, construction and operations phases of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Authority Members as follows:

I. DEFINITIONS

As used in this Agreement, the meaning of the terms used hereafter shall be as follows:

1.1. Agreement: This Joint Exercise of Powers Agreement as it currently exists or as it may be amended or revised from time to time.

1.2. Authority: The legal entity defined in this Agreement for the Sites Project Authority as organized by this Agreement.

1.3. Authority Member: An entity that meet the requirements of California Water Code § 79759 (a) or (b) and that is listed in the opening paragraph of this Agreement.

1.4. Benefits & Obligations Contract: The contract entered into by and between the Authority and each Project Participant governing each Project Participant's right to water service and Project water, storage capacity and conveyance capacity, and related rights, duties and obligations.

1.5. Board of Directors or Authority Board: The governing body of the Authority as established in Article IV of this Agreement.

1.6. Bylaws: Additional requirements to those contained in this Agreement related to the implementation of the Project; assigning delegations of authority, decision-making and dispute resolution; roles and responsibilities for Authority Board and Reservoir Committee; membership types; and cost management.

1.7. Ex-Officio Member: The California Department of Water Resources ("DWR"), subject to the terms and conditions of Section 3.2 of this Agreement.

1.8. Project Participant: An agency, entity or company, that may or may not be an Authority Member and is entitled to a capacity interest in the Project as a signatory to the Benefits & Obligations Contract. In the case where DWR signs the Benefits & Obligations Contract on behalf of a Project Participant whose Project costs are included on that Project Participant's Statement of Charges, the Project Participant is considered the signatory for purposes of this Agreement and the Bylaws. The Bylaws and the Benefits & Obligations Contract provide for the rights, duties and obligations of the Project Participants.

1.9. Reservoir Committee: The committee formed and existing pursuant to Section 3.5 of this Agreement, composed of representatives of Project Participants.

1.10. State and Federal Contracts: Contracts between the Authority and State and Federal agencies concerning Project funding, permitting, and operations, including, without limitation, the Proposition 1 Water Storage Investment Program Contract and the Reclamation Partnership Agreement, or each of them as the context requires, but excluding any agreement the Authority enters into with a federal agency pursuant to the Water Infrastructure Finance and Innovation Act (WIFIA).

II. PURPOSES AND POWERS

2.1 Creation: Pursuant to the Joint Exercise of Powers Act ("Act"), California Government Code Section 6500 et seq., and this Agreement, the Authority is duly formed and existing, and is a distinct public agency that is separate from its Authority Members.

2.2 Purpose: The purpose of this Agreement is to establish an independent JPA to exercise powers specifically identified herein that are common to the Authority Members to, among other

things, effectively study, promote, develop, permit, design, finance, acquire, construct, manage, and operate the Project. The purposes of pursuing and developing the Project are to: enhance water management flexibility in the Sacramento Valley, increase the reliability of water supplies in California, and provide storage and operational benefits to enhance water supply reliability and improve water quality and ecosystems.

2.3. Reserved Powers: Subject to the terms and conditions of this Agreement and the Bylaws, the Authority Board shall have sole responsibility for the following Project elements, referred to in this Agreement as the “Reserved Powers”:

- 2.3.1. Securing and maintaining the Project’s water rights permits and licenses from the State Water Resources Control Board, and ensuring that Project operations comply with the permits and licenses;
- 2.3.2. Securing and maintaining environmental approvals necessary and appropriate for the Project, including without limitation such approvals and certifications as are required by the California Environmental Quality Act and the National Environmental Protection Act, and ensuring that Project operations comply with such approvals and certifications;
- 2.3.3. Entering into and administering contracts with federal and state agencies necessary and appropriate for the Project, and ensuring that Project operations comply with such contracts.
- 2.3.4. Exercising the power of eminent domain to acquire such interests in real property as are necessary and appropriate for the Project, and holding title to such property interests;
- 2.3.5. Securing such funding as is necessary and appropriate for the Project from any federal, state or local public agency or program, including without limitation from Proposition 1 (California Water Code § 79750 *et seq.*) and WIFIA, and ensuring that Project design, construction, operations and maintenance comply with any applicable financial instruments secured by the Authority in accordance with the Benefits & Obligations Contract;
- 2.3.7. Retaining and managing all contracts for accounting and auditing services, and ensuring compliance with all accounting and auditing laws, rules and regulations applicable to the Authority and the Project.
- 2.3.8. Engaging in local community relations.
- 2.3.9. Approving the budget for the Project as the Reservoir Committee develops and amends from time to time pursuant to the Bylaws, which approval shall not be withheld, conditioned, or delayed absent the Authority Board’s demonstration that the budget would either (1) be contrary to law, including rules provided for under

any Project permit or entitlement, or (2) violate any contract, including without limitation the Benefits & Obligations Contract, a State or Federal Contract, or any financing contract.

2.4. Exercise of Reserved Powers: Subject to the terms and conditions of this Agreement and the Bylaws, the Authority Board shall have the power to undertake the following in its exercise of the Reserved Powers, and in effectuating the Reservoir Committee's Delegated Authorities as needed:

- 2.4.1. make and enter into contracts necessary for the full exercise of its Reserved Powers;
- 2.4.2. perform studies, environmental review, engineering and design, and if appropriate, permitting, construction of water storage, and related conjunctive management;
- 2.4.3. contract for the services of engineers, attorneys, scientists, planners, financial consultants, and separate and apart therefrom, to employ such persons as it deems necessary;
- 2.4.4. apply for, accept, and receive permits, licenses, grants, loans, or other funding from any federal, state or local public agency;
- 2.4.5. issue revenue bonds and other forms of indebtedness to the extent, and on the terms, provided by the Act;
- 2.4.6. incur debts, liabilities, and obligations;
- 2.4.7. adopt bylaws, rules, regulations, policies and procedures, governing the operation of the Authority and the Project; and
- 2.4.8. delegate levels of authority to the Reservoir Committee and other advisory groups as the Authority Board deems appropriate and consistent with the requirements specified in the Bylaws.

2.5. Manner of Exercise of Powers: To the extent not specifically provided for in this Agreement or the Act, the Authority shall exercise its powers subject to the restrictions upon the manner of exercising the powers under the laws applicable to the Glenn-Colusa Irrigation District.

2.6. GCID, RD 108 and TCCA Operations: The Authority Members anticipate that the Project will be within or adjacent to GCID, RD 108, and/or TCCA districts with at least a portion of the conveyance of water into the Sites Reservoir to be accomplished by wheeling water through GCID's Main Canal, facilities that currently exist or that might in the future be constructed within the boundaries of RD 108, and/or the Tehama-Colusa Canal. The Authority shall not have the power, except with the express written consent of GCID, RD 108 and/or TCCA, depending on which facilities are at issue, 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 GCID, RD 108 and/or TCCA (and, in the case of TCCA, the water agencies it serves) or the operations of their facilities or any facilities they operate under contract.

2.7. Maxwell Irrigation District (MID) Operations: The Authority Members anticipate that the Project could affect certain of MID's water rights downstream of Sites Reservoir. With respect to such of MID's rights, the Authority acknowledges and affirms its obligations to MID as identified in that certain *Memorandum of Understanding Regarding Maxwell Irrigation District Water Rights and Sites Reservoir*.

2.8. Counties' Powers: Nothing in this Agreement shall be construed as the surrender or relinquishment of the land use authorities as provided by law of the County of Colusa, the County of Glenn, or the County of Yolo.

III. AUTHORITY MEMBERSHIP

3.1. Generally: Authority Members comprise the public agencies (as defined in Section 6500 of the Act) that are authorized under the Act and Proposition 1 to be Authority Members and that are signatories to this Agreement.

3.2. DWR and Bureau of Reclamation: The Authority may enter into a State or Federal Contract, as applicable, with the California Department of Water Resources (DWR) and/or the Bureau of Reclamation (Reclamation) to carry out the purposes of this Agreement. Pursuant to Water Code section 79759(b), DWR shall be an Ex-Officio Member of the Authority, but shall be non-voting and "shall not control the governance, management, or operation" of the Project. DWR shall not be a Project Participant.

3.3. Addition of Members: Entities authorized by law to participate in a JPA located within the Sacramento River watershed may subsequently become Authority Members upon an affirmative vote of at least seventy-five percent (75%) of the total number of the governing boards of the Authority Members and the new Authority Member's execution of this Agreement, as it may have been amended. An entity requesting to become an Authority Member shall provide certification of compliance with the membership requirements of this Agreement and the Bylaws. The entity requesting to become an Authority Member may represent a group of other entities. Terms and conditions for new Authority Member's participation in the Authority, if any, shall be set forth in an amendment to this Agreement or in the Bylaws. Such terms and conditions shall be consistent with this Agreement and any contracts, resolutions, or indentures of the Authority then in effect.

3.4. [Reserved]

3.5. Reservoir Committee: There is hereby formed a Reservoir Committee, composed of representatives of Project Participants. The Reservoir Committee functions to exercise the "Delegated Authorities", which are all such powers to operate the Project as are not Reserved

Powers defined in Section 2.3. The charter for the Reservoir Committee, including conditions of membership and the manner in which it conducts itself is set forth in the Bylaws.

IV. GOVERNANCE AND INTERNAL ORGANIZATION

4.1. Board of Directors: The governing body of the Authority shall be the Board of Directors (Authority Board) that will conduct all business on behalf of the Authority consistent with this Agreement, the Bylaws and applicable law. The Authority Board will consist of one representative of each Authority Member. To remain in an active status, each Authority Member having representation on the Authority Board shall be in good standing as defined in the Bylaws.

4.2. Appointment: Each Authority Member shall appoint a Director to the Authority Board. Each Authority Member shall also be entitled to appoint an Alternate Director to the Authority Board. The role of the Alternate Director shall be to assume the duties of an Authority Member's Director in case of the absence or unavailability of such Director.

Should a Director who is an officer of the Authority Board not be in attendance, the Authority Member's Alternate Director shall not assume the duties of the officer. Should the Chair be absent, the Vice-Chair shall assume the Chair's responsibilities until the Chair is present, and if both are absent the Authority Board may appoint a temporary Chair.

Directors and Alternates both serve at the pleasure of the governing body of their respective Authority Member. Authority Members shall communicate their Director and Alternate selections, and any changes thereto, to the Authority in writing. Each Authority Member is entitled to one vote, either by its Director or the Alternate, at a meeting of the Authority Board.

4.3. Meetings: The Authority Board shall hold at least one regular meeting per year, and may hold regular or special meetings at more frequent intervals. All meetings of the Authority Board shall be called, held, noticed, and conducted subject to the provisions of the Ralph M. Brown Act (Government Code section 54950 *et seq.*) and the Bylaws.

4.4. Quorum: A majority of the total number of Directors shall constitute a quorum.

4.5. Voting:

4.5.1. Material Change and Shared Decision Items are those matters specifically identified as such in the Bylaws and require a seventy-five percent (75%) vote of both (i) the total number of Directors and (ii) of the Reservoir Committee representatives according to the Reservoir Committee's weighted vote.

4.5.2. Routine Matters or Non-Material Change and Shared Decisions Items Before the Authority: The Authority Board shall take action only upon an affirmative vote of a majority of the total number of Directors.

4.5.3. Material Change Items Before the Authority: Regarding a Material Change before the Authority Board only, the Authority Board shall take action only upon an affirmative vote of a at least seventy-five percent (75%) of the total number of Directors. Such changes are expressly provided for in this Agreement, and include, without limitation, those identified in Sections 3.3, 7.3, and 8.1.

4.6. Officers:

4.6.1. The Authority Board shall select from among the Directors a Chair, who will be the presiding officer for all Authority Board meetings, and a Vice-Chair, who will preside in the absence of the Chair.

4.6.2. The Authority Board shall select a Treasurer, who need not be a Director and who shall be the depository and have custody of all money of the Authority and shall perform the duties specified in Government Code section 6505.5. The Treasurer shall be bonded in accordance with Government Code section 6505.1 and shall pay all demands against the Authority that have been approved by the Authority Board.

4.6.3. The Authority Board shall select a Secretary, who need not be a Director and who shall be responsible for keeping the minutes of all meetings of the Authority Board and all other official records of the Authority. The Authority Board may combine the positions of Secretary and Treasurer.

4.6.4. The Bylaws may further address the duties, responsibilities and administrative requirements for the officers.

4.7. [Reserved]

4.8. Liability of Authority, Officers, and Employees: The Directors, officers, and any employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Director, officer, employee or agent will be responsible under this Agreement for any act or omission by another Authority Member, Authority Board officer, or Authority contractor or employee. The Authority shall indemnify and hold harmless the Authority Members, Authority Board officers, and Authority employees or consultants, for any action taken lawfully and in good faith pursuant to this Agreement. Nothing in this section shall be construed to limit the defenses available under the law, to the Authority Members, the Authority, or its Directors, officers, employees or agents.

V. FINANCIAL PROVISIONS

5.1. The terms and conditions of this Article V pertain only to those funds that are generated solely by Authority Members for the administration of the Authority.

5.2. Fiscal Year: The fiscal year shall run concurrent with the calendar year, unless the Authority Board decides otherwise.

5.3. Depository: All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with the funds of any Authority Member, Project Participant, the Reservoir Committee, or any other person or entity. Regular reports shall be made as directed by the Authority Board, but at least quarterly, to the Authority Board of all receipts and disbursements. The books and records shall be open to inspection by the Authority Board, individual Directors, and Project Participants upon reasonable notice.

5.3. Budgets of the Authority Board: A draft Authority Board budget will be prepared for the Authority Members to review at least 45 days before the beginning of the Authority's next fiscal year. The Authority Board shall approve the budget no later than 15 days before the beginning of the fiscal year. The budget shall include: Project-specific costs, as distinct from general and administrative costs of the Authority, shall be fully described and specified in the Benefits & Obligations Contract or applicable State or Federal Contracts. Consistent with Section 5.1 above, the Authority Board shall ensure that all costs incurred by the Authority directly relating to the Project, if any, will be paid only by the Project Participants in the manner provided for in the Benefits & Obligations Contract or any State or Federal Contract, and will not be paid for by the Authority as general and administrative costs. The Bylaws may include additional requirements and criteria for such costs.

5.4. Recovery of General and Administrative Costs:

5.4.1. The Authority Board may assess each Authority Member for the general and administrative costs to operate the Authority. Payments of public funds may be made to defray the costs incurred in carrying out such purposes, and advances of funds may be made for use in doing so, to be repaid as provided in this Agreement. Personnel, equipment or property of one or more of the Authority Members may be used in lieu of other contributions or advances, upon Authority Board approval, and will be treated as a contribution from that Authority Member.

5.4.2. General and administrative costs incurred by the Authority in carrying out its purposes, as described in Section 5.3, shall be shared by the Authority Members as determined by the Authority Board.

5.4.3. The Authority shall periodically, as necessary, issue an invoice to each Authority Member reflecting the expenses attributable to that Authority Member in accordance with this Agreement.

5.4.4. Upon request of any Authority Member, the Authority shall produce and allow the inspection of all documents relating to the computation of expenses attributable to the Authority Members under this Agreement. If an Authority Member does not agree with the amount listed on the invoice, it must make full payment and provide a cover letter accompanying payment to the Authority

specifying the amount in dispute and providing a detailed explanation of the basis for the dispute. The Authority shall advise the disputing Authority Member of the Authority's determination within 30 business days.

5.5. Recovery of Project Operations Costs: The Benefits & Obligations Contract and applicable State and Federal Contracts shall specify the requirements for recovery of costs related to Project operations..

5.6. Auditor: An auditor shall be chosen annually by, and serve at the pleasure of, the Authority Board. The auditor shall make an annual audit of the accounts and records of the Authority. A report shall be filed as a public record with the Auditor of the County where the Authority is domiciled, consistent with Section 6505 of the Act, and with each agency that is an Authority Member or a Project Participant. Such report shall also be filed with the California Secretary of State or State Controller within twelve months of the end of the fiscal year.

5.7. Bonds: The Authority Board may, from time to time, designate the officers or other persons who have charge of, handle, or have access to any property of the Authority and shall require such officers or persons to file an official bond in an amount to be fixed by the Authority Board.

5.8. Authority Members' Limited Liability: As provided by Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority shall be the debts, liabilities, and obligations of the Authority only, and not of the constituent Authority Members.

VI. BENEFITS & OBLIGATIONS CONTRACT

6.1. General: The Authority intends to carry out the purposes of this Agreement in a manner consistent with the joint exercise of powers described herein. Funding and participation in the Project shall be governed by the Benefits & Obligations Contract or applicable State or Federal Contract. Additionally, the Authority may enter into agreements with the State of California, the United States, or any other public or private entity, subject to the approval of the Reservoir Committee to the extent required by the Bylaws.

6.2. Parties to the Benefits & Obligations Contract: In connection with the Project, the Authority Members and Project Participants electing to participate in the Project shall enter into the Benefits & Obligations Contract with the Authority. No Authority Member shall be required to enter into the Benefits & Obligations Contract.

6.3. Financial Obligations Under the Benefits & Obligations Contract: Unless otherwise provided for in this Agreement or the Bylaws, all assets, rights, benefits, and obligations attributable to the Project shall be assets, rights, benefits, and obligations of Project Participants. Any debts, liabilities, obligations or indebtedness incurred by the Authority in regard to the Project shall be the debts, liabilities, obligations, and indebtedness of Project Participants and shall not be the debts, liabilities, obligations or indebtedness of the Authority Members that have not executed the Benefits & Obligations Contract, and that are payable under the Benefits & Obligations

Contract. The Benefits & Obligations Contract may include signatories that are not Authority Members. The Bylaws may provide additional requirements regarding the implementation of the Project.

VII. TERMINATION, WITHDRAWAL, SUSPENSION, AND DISPUTE RESOLUTION

7.1. Termination:

- 7.1.1. Mutual Termination. This Agreement may be terminated by the mutual agreement of at least seventy-five percent (75%) of the total number of the governing boards of the Authority Members in writing, provided that in recognition of the requirements of Proposition 1 and the reliance on the Authority by the signatories to the Benefits & Obligations Contract, termination of this Agreement shall not be effective prior to the assignment of all rights, duties and obligations to a separate joint powers authority formed and existing in a manner consistent with the requirements of Proposition 1 for the purposes of owning the Project and exercising the Reserved Powers. The manner of formation of a joint powers authority is a Material Change and Shared Decision subject to the approval of both the Authority Board and the Reservoir Committee, as provided in Section 12.3.11 of the Bylaws.
- 7.1.2. Project Termination. In the event the termination of this Agreement becomes necessary or appropriate as a result of the cessation of the Project for reasons beyond the control of the Authority, including a decision by the Authority Board and Reservoir Committee pursuant to Section 12.3.10 of the Bylaws, then the Authority shall continue to exist for purposes of facilitating by the Project Participants (i) the disposal of all claims, (ii) payment of debt service, (iii) reimbursement owed to financial institutions or other parties advancing funds to the Authority for the Project, (iv) satisfaction of other covenants contained in reimbursement agreements with such institutions and parties, and (v) distribution of assets and all other functions necessary to conclude the affairs of this Authority, as provided for in the Benefits & Obligations Contract.
- 7.1.3. Removal of an Authority Member by the Authority. Any Authority Member may be removed from the Authority upon the affirmative vote of all Directors except the vote of the Director appointed by the Authority Member then considered for termination. Prior to any vote to remove an Authority Member, written notice of the proposed removal and the reason(s) for such removal shall be presented at a regular Authority Board meeting with opportunity for discussion. The Authority Member subject to possible removal shall have the opportunity at the next regular Authority Board meeting to respond to any reasons and allegations that may be cited as a basis for removal prior to a vote. If an Authority Member is removed, that Authority Member will be responsible for its share of any costs incurred by the Authority up to the date of removal. Nothing in this Section 7.1.3 shall affect

membership on the Reservoir Committee as to a removed Authority Member that has signed the Benefits & Obligations Contract.

7.2. **Authority Member Withdrawal from Authority:** Any Authority Member may withdraw from the Authority by giving at least 30 days written notice of its election to do so, which notice shall be given to the Authority and each Authority Member to this Agreement; provided that such withdrawal does not in any way impair any contracts or obligations of the Authority then in effect, including, without limitation, the Benefits & Obligations Contract and the State and Federal Contracts. Prior to withdrawal or as soon as an accounting can be completed, the withdrawing Authority Member shall pay its share of general and administrative costs described in Section 5.5; provided, however, the withdrawing Authority Member shall only be liable for expenses incurred under this Agreement through the date of withdrawal. The withdrawing Authority Member shall also be responsible for its share of any claims, demands, damages, or liability arising from this Agreement through the date of withdrawal. As to any Authority Member that is a signatory to the Benefits & Obligations Contract, no withdrawal undertaken pursuant to this Section 7.2 shall affect the withdrawing Authority Member's rights, duties and obligations under the Benefits and Obligations Contract, or the withdrawing Authority Member's membership in the Reservoir Committee.

7.3. **Membership Suspension:** Should any Authority Member be deemed by the Authority Board to not be in Good Standing as defined in the Bylaws, an affirmative vote of at least seventy-five percent (75%) of the total number of Directors can suspend the Authority Member's voting rights. Once the Authority Member is deemed by the Authority Board to meet the requirements for being in Good Standing, the Authority Member can petition the Authority Board to have its voting privileges and, if applicable, any Authority Board officer status restored by an affirmative vote of the Authority Board consisting of at least seventy-five percent (75%) of the total number of Directors. During the time the Authority Member has not been in Good Standing, the Authority Member shall remain obligated to comply with all other requirements of this Agreement, the Bylaws and the Benefits & Obligations Contract.

7.4. **Disposition of Assets Upon Termination:** Upon termination of this Agreement, any surplus money or assets in the possession of the Authority for use under this Agreement, after payment of liabilities, costs, expenses and charges incurred under this Agreement, shall be returned to the then-existing Authority Members in proportion to the contributions made by each. All other property, works, rights and interests of the Authority shall be assigned to the joint powers authority formed to replace the Sites Project Authority referenced in Section 7.1.1.

7.5. **Dispute Resolution.** If a dispute arises among any of the Authority Members relating to or arising from an Authority Member's rights, duties, obligations or performance under this Agreement, then the Authority Members that are parties to the dispute 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 Authority Members' representatives to resolve any such dispute. If the chosen representatives fail to resolve the dispute, the presiding officer of each board of the Authority Members that are parties to the dispute shall meet together to negotiate to resolve the dispute.

If the Authority Members that are parties to the dispute are unable to resolve the dispute through informal dispute resolution within thirty (30) days, an Authority Member may submit the dispute to formal mediation. The parties to the dispute shall voluntarily agree to the choice of mediator, or, if the parties cannot agree upon a mediator, one shall be appointed by the Superior Court of Colusa County upon motion for appointment of a neutral mediator. The cost of mediation shall be paid in equal proportion among the Authority Members involved in the dispute.

Each involved Authority Member reserves any and all rights and remedies available to it under the Agreement or at law or in equity or otherwise if a dispute is not resolved in the manner provided for above.

In the event of any dispute that is unresolved pursuant to this Agreement, the Authority Member or Members prevailing in such dispute shall be entitled to collect from the other Authority Member or Members that are parties to the dispute all costs incurred in such dispute, including reasonable attorneys' fees.

VIII. MISCELLANEOUS PROVISIONS

8.1. Amendment of Agreement: This Agreement may be amended only by an affirmative vote of at least seventy-five percent (75%) of the governing boards of the Authority Members; provided, however, (i) this Agreement may not be amended to terminate the participation of an Authority Member without the affirmative vote of all governing boards of the Authority Members except the vote of the Director appointed by the Authority Member then considered for termination, (ii) no amendment to this Agreement shall be made that would interfere with the rights of any signatory to the Benefits & Obligations Contract, and (iii) no amendment to this Agreement shall be made that would divest the Reservoir Committee or any Project Participant of any authority they have under the Bylaws. The Authority shall provide notice to all Authority Members and members of the Reservoir Committee of amendments to this Agreement, including the effective date of such amendments. To provide non-concurring Authority Members an opportunity to withdraw from the Authority, any amendment to this Agreement shall be binding on all Authority Members thirty (30) days after the required concurrence has been obtained.

8.2. Adoption and Amendment of Bylaws: By operation of the Authority Members' execution of this Agreement, the Authority Board hereby irrevocably adopts the Bylaws. The Bylaws may only be amended in the manner set forth in the Bylaws, which provide that such amendment constitutes a Material Change and Shared Decision Item requiring an affirmative vote of at least seventy-five percent (75%) of both the total number of Directors and of the total number of Reservoir Committee representatives according to the Reservoir Committee's weighted vote. The Authority shall provide written notice to all Authority Members of amendments to the Bylaws, which includes the effective date of such amendments.

8.3. Assignment: Except as otherwise expressed in this Agreement or the Bylaws, the rights and duties of the Authority Members may not be assigned or delegated without the advance written consent of all the other Authority Members and, if provided for in the Bylaws, the Reservoir Committee, and any attempt to assign or delegate such rights or duties in contravention

of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority Members. This section does not prohibit an Authority Member from entering into an independent agreement with another agency, person or entity regarding the funding or financing of that Authority Member's contributions to the Authority, or the disposition of the proceeds which that Authority Member receives under this Agreement, so long as the independent agreement does not affect or purport to affect, the rights and duties of the Authority or the Authority Members under this Agreement.

8.4. Severability: If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Authority Members that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be deemed reformed so as to be lawful, valid, and enforced to the maximum extent possible.

8.5. Execution by Counterparts: This Agreement may be executed in any number of counterparts and upon execution by all Authority Members, each executed counterpart shall have the same force and effect as an original instrument and as if all Authority Members had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but have attached to it one or more signature pages.

8.6. Authority Members to be Served Notice: Any notice authorized to be given pursuant to this Agreement shall be validly given if served in writing either personally, by facsimile, by electronic mail (e-mail), by deposit in the United States mail, first-class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt, and (ii) by mail shall be conclusively deemed given 48 hours after the deposit thereof if the sender returns the receipt. All notices shall be sent to the addresses listed in Exhibit A to this Agreement.

8.7. Filing of Agreement: Pursuant to section 6503.5 of the Act, the Authority shall file or cause to be filed a certified copy of this Agreement with the Secretary of State within 30 (thirty) days following the last signature below.

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

COLUSA COUNTY WATER DISTRICT

Dated: _____
(Effective mmm dd, yyyy)

By: _____

COUNTY OF COLUSA

Dated: _____
(Effective mmm dd, yyyy)

By: _____

COUNTY OF GLENN

Dated: _____
(Effective mmm dd, yyyy)

By: _____

GLENN-COLUSA IRRIGATION DISTRICT

Dated: _____
(Effective mmm dd, yyyy)

By: _____

PLACER COUNTY WATER AGENCY & CITY OF ROSEVILLE, Jointly

Dated: _____
(Effective mmm dd, yyyy)

By: _____

Dated: _____
(Effective mmm dd, yyyy)

By: _____

RECLAMATION DISTRICT 108

Dated: _____
(Effective mmm dd, yyyy)

By: _____

CITY OF SACRAMENTO & SACRAMENTO COUNTY WATER AGENCY, Jointly

Dated: _____
(Effective mmm dd, yyyy)

By: _____

Dated: _____
(Effective mmm dd, yyyy)

By: _____

TEHAMA-COLUSA CANAL AUTHORITY

Dated: _____
(Effective mmm dd, yyyy)

By: _____

WESTERN CANAL WATER DISTRICT

Dated: _____
(Effective mmm dd, yyyy)

By: _____

WESTSIDE WATER DISTRICT

Dated: _____
(Effective mmm dd, yyyy)

By: _____

Exhibit A to the Sites Project Authority Joint Exercise of Powers Agreement:

Effective Date: _____

Colusa County Water District
General Manager
P.O. Box 337
Arbuckle, CA 95912

Reclamation District 108
General Manager
P.O. Box 50
Grimes, CA 95950

County of Colusa
Chair of the Board of Supervisors
547 Market Street, Suite 108
Colusa, CA 95932

Sacramento County Water Agency
700 H Street, Suite 7650
Sacramento, CA 95814
& City of Sacramento
915 I Street
Sacramento, CA 95814

County of Glenn
Chair of the Board of Supervisors
525 West Sycamore Street
Willows, CA 95988

Tehama-Colusa Canal Authority
General Manager
P.O. Box 1025
Willows, CA 95988

Glenn-Colusa Irrigation District
General Manager
P.O. Box 150
Willows, CA 95988

Western Canal Water District
General Manager
PO Box 190
Richvale, CA 95974

Placer County Water Agency
PO Box 6570
Auburn CA 95604
& City of Roseville
2005 Hilltop Circle
Roseville, CA 95747

Westside Water District
General Manager
5005 CA-20
Williams, CA 95987

**THIRD AMENDED AND RESTATED
 BYLAWS OF THE
 SITES PROJECT AUTHORITY
 FOR PHASES 3, 4 and 5 OF THE SITES RESERVOIR
 PROJECT**

Table of Contents:

1. Relationship: Agreement and Bylaws2

2. Sites Project Authority’s Mission, Vision & Values3

3. Definitions 3

4. Board of Directors and Officers5

5. Project Agreement Committee Leadership and
 Administrative Process 7

6. Common to Board of Directors and Project
 Agreement Committee Leadership Positions 8

7. Membership Types 9

8. Members & Non-Member Participating Parties - Common
 Requirements 11

9. Committees 12

10. The Authority’s Powers and/or Authorities 12

11. Delegations of Authority 13

12. Material Change - Applicable for Phase 2 14

13. Integration of Decisions - Authority Board &
 Project Agreement Committees 16^[Author1]

[Note: This Draft of the Phase 3-4-5 Bylaws is being provided as a draft, and the terms reflected in this draft remain subject to further revision and negotiation among the parties involved.]

1 Relationship: Agreement and Bylaws

- 1.1. Agreement: The Sites Project Authority Joint Powers Agreement (Agreement) is the chartering document that defines, among other things:
 - The Authority's members and general limitations on membership in the Authority;
 - The Authority's powers relative to the Sites Reservoir Project (the "Project"), as further defined in these Bylaws, the Joint Exercise of Powers Act (Cal. Gov. Code §§ 6500 *et seq.*) and the California Irrigation District Law (Cal. Water Code §§ 20500 *et seq.*);
 - The Authority's purpose, which is specific to the Project;
 - The Authority Board's officers;
 - Minimum meeting and voting requirements;
 - The adoption and amendment of these Bylaws.
- 1.2. Bylaws: These Bylaws are adopted pursuant to the Agreement and consistent with the Benefits & Obligations Contract, which collectively constitute the contract provisions for the sharing of the governance of the Sites Project between the Authority and Reservoir Committee, provide for the delegation of authority to the Reservoir Committee (defined below), and provide procedures for administration of the Authority. These Bylaws are subject to amendment in the manner provided for herein.
- 1.3. Severability: If one or more clauses, sentences, paragraphs or provisions of these Bylaws are held to be unlawful, invalid or unenforceable, the remainder of these Bylaws shall not be affected thereby. Such clauses, sentences, paragraphs or provisions shall be reformed in the manner provided for in Section 14 below so as to be lawful, valid, and enforced to the maximum extent possible.
- 1.4. Amendments of Bylaws: As provided at Section 8.2 of the Agreement and Section 12.3.10 of these Bylaws, these Bylaws may be amended only by an affirmative vote of at least seventy-five percent (75%) of the total number of Directors of the Authority Board, and seventy-five percent (75%) of the total number of members of the Reservoir Committee.

2 [Reserved]

3 Definitions

- 3.1. Authority Board: The governing body of the Authority, composed of each Authority Member's delegate (or its respective alternate if the delegate is not present).
- 3.2. Benefits & Obligations Contract: The contract entered into by and between the Authority and each Project Participant governing each Project Participant's share of the Project's water, storage capacity and conveyance capacity, and related rights, duties and obligations.
- 3.3. Event of Default: Described in Section 10 of the Benefits & Obligations Contract.
- 3.4. Material Change: Any change to the Project, including without limitation its governing documents, operations, permits and entitlements, as identified in the Agreement or in Section 12 below.

- 3.5. Authority Member: An entity that meet the requirements of California Water Code § 79759 (a) or (b) and that is listed in the opening paragraph of the Agreement.
- 3.6. Partner Agreements: Any agreement entered into between the Authority and another entity in accordance with which the Authority has the right to convey Project water to or from the Project, as amended from time to time.
- 3.6. Phase: Implementation of the Project is entering its final design, construction and operations phases, sometimes referred to as Phases 3, 4, and 5.

For the Authority to accomplish its mission in an efficient and cost-effective manner, the start of a successor phase may overlap with the completion of the predecessor phase. As provided in these Bylaws, such overlap shall require Reservoir Committee approval, as it affects annual operating budgets and the respective Project Participant's financial obligations under the Benefits & Obligations Contract.

- 3.7.. Project Participant: An agency, entity or company, that may or may not be an Authority Member, and participates in the Project as a signatory to the Benefits & Obligations Contract. In the case where the California Department of Water Resources (DWR) signs the Benefits & Obligations Contract on behalf of a Project Participant whose Project costs are included on that Project Participant's Statement of Charges, the Project Participant, and not DWR, is considered the signatory for purpose of the Agreement and these Bylaws. These Bylaws and the Benefits & Obligations Contract provide for the rights, duties and obligations of the Project Participants.
- 3.8. Reservoir Committee: A committee of the Authority Board composed of representatives of signatories to the Benefits & Obligations Contract. The Reservoir Committee functions to exercise the "Delegated Authorities" more specifically identified in Section 10 of these Bylaws, which are all such powers to operate the Project as are not Reserved Powers defined in the Agreement. These Bylaws constitute the charter for the Reservoir committee, including the manner in which it conducts itself and the conditions of membership.
- 3.9 State and Federal Contracts: Contracts between the Authority and State and Federal agencies concerning Project funding, permitting, and operations, including, without limitation, the Proposition 1 Water Storage Investment Program Contract and the Reclamation Partnership Agreement, or each of them as the context requires, but excluding any agreement the Authority enters into with a federal agency pursuant to the Water Infrastructure Finance and Innovation Act (WIFIA).
- 4.0 Water Right: The water right obtained and owned by the Authority for the Project.

4 Board of Directors and Officers

In addition to the primary requirements applicable to the Authority Board defined in the Agreement, the following additional requirements shall apply:

- 4.1. Role of Authority Board: To act as the Project owner and exercise the Reserved Powers (as defined in the Agreement) in a manner consistent with the Agreement and these Bylaws.
- 4.2. Minimum Qualifications: Each Director shall be a designated representative from his or her respective Authority Member that is in good standing as defined at Section 8.1. Absentee votes shall not be considered. An Authority Member's designated alternate is not eligible to be candidate for an Officer position. If an Officer is the designated

representative of an Authority Member that is not in good standing and that Authority Member's voting rights have been suspended as provided at Section 7.3 of the Agreement, then that Officer shall no longer be eligible to serve as an officer of the Authority Board and the Authority Board shall make an appointment for the remaining duration of that office.

- 4.3. Officer Term Limits: Board officers shall serve a term that does not exceed one year in duration. A Board officer is not precluded from holding consecutive terms.
- 4.4 Election of Officers: The Authority Board shall annually elect the Chair and one or more Vice Chairs from among the Directors. The Board shall annually appoint a Secretary and Treasurer and may appoint any other officers or assistant officers as the Board may determine, which officers need not be Directors. Elections shall occur annually, at the regularly scheduled Board meeting in February, or if for any reason the election does not occur, then at the next meeting of the Authority. For each position, the candidate receiving the majority vote from the Authority Members present shall be the successful candidate. Officers shall assume office upon their election and shall serve until their successor is elected.
- 4.5 Officer Vacancy: Should an officer position become vacant, the Board shall make an appointment for the remaining duration of the vacated position's term.
- 4.6. Treasurer's Roles and Responsibilities:
The Treasurer shall meet or exceed the requirements of Government Code Section 6505.5 and the Authority shall secure a bond for the position.

The Treasurer shall ensure auditor's reports are filed as required by law, manage the annual budget preparation in accordance with Authority Board and Reservoir Committee's direction and the Authority Board's and Reservoir Committee's approval of the budget, and take such other actions or assume such duties as the Authority Board and Reservoir Committee may reasonably assign from time to time.

- 4.7. Secretary's Roles and Responsibilities:
Ensure Authority Board and Reservoir Committee agendas, minutes, and meeting protocol, and preparation of agendas and minutes as may be delegated by the Board to a Board Clerk are prepared in accordance with public agency standard practice.
- 4.8. Location: The Sites Project Authority's principal place of business and office and mailing addresses are:

Physical Address:
122 Old Highway 99 West
Maxwell, CA 95955

Mailing Address:
P.O. Box 517
Maxwell, CA 95955

- 4.9 Meeting Locations/Teleconference meetings:
- a. Most meetings of the Authority Board and Reservoir Committee will be jointly held at the principal office in Maxwell; however, because the Authority Board and Reservoir Committee have members throughout the State, and in accordance with Water Code section 79759(b) includes the Department of Water Resources (DWR) as an Ex Officio Member of the Authority, some meetings of the Authority Board or Reservoir Committee may be held elsewhere in the State.

- b. Meetings of the Authority Board or Reservoir Committee shall comply with the provisions of the Brown Act governing conduct and location of meetings. For purposes of providing video or teleconferencing access for meetings of the Authority Board or the Reservoir Committee, at least a quorum of the Authority Board or the Reservoir Committee shall participate from within the combined territory of the Authority Members or the Project Participants, as the case may be. Such meetings shall be accessible to the general public either in person or by video or teleconferencing.

5 Reservoir Committee Leadership and Administrative Process

- 5.1 Establishment of Reservoir Committee: Section 3.5 of the Agreement establishes a Reservoir Committee of the Authority, which is composed of representatives of Project Participants. The Reservoir Committee functions to exercise the "Delegated Authorities", which are all such powers to operate the Project as are not Reserved Powers defined in Section 2.3 of the Agreement, and as are further described in these Bylaws.
- 5.2 Conditions of Reservoir Committee Membership: Membership on the Reservoir Committee shall be conditioned upon a Project Participant entering into the standard form of Benefits & Obligations Contract with the Authority, and remaining in good standing according to the terms and conditions of Section 8.1 of these Bylaws. Except for Authority Members who enter into the Benefits & Obligations Contract, consistent with Section 12.3.12 below, the decision of whether to approve an entity for membership on the Reservoir Committee requires an affirmative vote of at least seventy-five percent (75%) of the weighted vote of the Reservoir Committee and at least seventy-five percent (75%) of the Authority Board.
- 5.3 Appointment of Reservoir Committee Representatives: Project Participants (including Authority Members that sign the Benefits & Obligations Contract) in good standing shall appoint their respective representative to the Reservoir Committee who is either an active member of the Project Participant's legislative body or is a duly appointed senior-level staff that has been delegated the authority by resolution or other action of the legislative body of the Project Participant (or if the Project Participant is not a public agency, by notice to the Authority and Reservoir Committee from the Project Participant's executive leadership) to make decisions on the Project Participant's behalf.
- 5.4 Committee Leadership: The Reservoir Committee shall annually elect a Chair and one or more Vice Chairs from among the Project Participants, and may appoint a Secretary and Treasurer and may appoint any other officers or assistant officers as the Reservoir Committee may determine. The Reservoir Committee may combine the offices of Secretary and Treasurer. Elections shall occur annually at the regularly scheduled Reservoir Committee meeting in February, or if for any reason the election does not occur, then at the next meeting of the Reservoir Committee. For each position, the candidate receiving the majority vote from the Project Participants present shall be the successful candidate. Officers shall assume office upon their election and shall serve until their successor is elected, The Committee Treasurer may be the Authority Treasurer, or if not, shall serve under the general supervision of the Authority Treasurer.
- 5.5 Officer Term Limits: Officers of the Reservoir Committee shall serve a term that does not exceed one year in duration. They are not precluded from holding consecutive terms.

5.6 Committee Officer Vacancy: Should a Reservoir Committee officer position become vacant, the Reservoir Committee shall make an appointment for the remaining duration of the vacated position's term.

5.7 Quorum and Voting of the Reservoir Committee: A weighted majority of the Reservoir Committee representatives representing Project Participants (including Authority Members that have executed the Benefits & Obligations Contract) shall constitute a quorum for the Reservoir Committee, unless otherwise provided in the Benefits & Obligations Contract. Each Project Participant's voting rights shall be calculated as follows:

- a. An equal number of voting shares for each Project Participant, that being one (1) divided by the total number of Project Participants, multiplied by fifty (50); plus
- b. An additional number of voting shares for each Project Participant equal to its Capacity Interest identified in the Benefits & Obligations Contract, multiplied by 50.

The figures calculated pursuant to items (a) and (b) above shall result in a weighted total of all voting shares of 100. Absentee votes shall not be considered. Voting thresholds to approve actions, including routine matters, and Material Change and Shared Decisions Items, shall be as provided in the Benefits & Obligations Contract and these Bylaws.

5.8 Election to Withdraw: Should a Project Participant elect to withdraw from its participation in the Project, the conditions of any such withdrawal shall be as set forth in the Benefits & Obligations Contract.

5.9 Termination of a Benefits & Obligations Contract: The Benefits & Obligations Contract may be terminated with respect to any Project Participant under conditions set forth in the Benefits & Obligations Contract.

5.10 Any agreement with third parties providing for the acquisition, construction, or management of the Project shall include provisions to provide for allocation of sales and use tax revenues to the County of Colusa or County of Glenn or County of Yolo, as applicable, to the greatest extent provided by law. Such agreements shall be developed in collaboration with the County of Colusa, the County of Glenn, and the County of Yolo.

6 Provisions Common to Authority Board and Reservoir Committee

6.1. Conflict of Interest Code: Each Director of the Authority Board and their delegated alternate and each Project Participant's representative serving on the Reservoir Committee or their delegated alternate shall timely file Statements of Economic Interest as required by the Authority's Conflict of Interest Code.

6.2. Compensation: No compensation shall be granted by the Authority to (a) any Director of the Authority Board or delegated alternate or (b) any Project Participant's representative to a Reservoir Committee or delegated alternate. When travel has been pre-approved by either the Authority or Reservoir Committee leadership, respectively, the representative is eligible to recover reasonable travel and related expenses.

- 6.3. Closed Sessions: The Authority Board or the Reservoir Committee, as the case may be, may enter into a closed session during a regular, adjourned regular or special meeting to consider matters that may lawfully be considered in such sessions in the manner provided by law. Consistent with the manner in which the Brown Act (Gov. Code § 54950 *et seq.*) has been interpreted and applied, no alternate is to attend closed session in addition to an alternate's Authority Board Director or Reservoir Committee member; rather, an alternate may only attend in the place of the alternate's absent Authority Board Director or Reservoir Committee member. After a closed session, the Authority Board or Reservoir Committee will report publicly any action taken in closed session, as well as the vote or abstention of any member present, to the extent required by the Brown Act.

The Authority Board Directors and Reservoir Committee members that attend a closed session may disclose information obtained in a closed session that has direct financial or liability implications for that Authority Member or Project Participant to the following individuals: (a) legal counsel of the Authority Member or Project Participant for purposes of obtaining advice on whether the matter has direct financial or liability implications to it; and (b) members of the legislative body of the Authority Member or Project Participant present in a closed session of that Authority Member or Project Participant.

7 Parties Involved in Project Oversight; State and Federal Partners

7.1. Authority Member:

An Authority Member is an entity that is signatory to the Agreement, that (1) meets the joint powers authority ("JPA") membership requirements of California Water Code § 79759(a) and (b) and, (2) that has the power to exercise the powers that the Authority exercises, as described in the Agreement.

Subject to the terms and conditions of Section 3.3 of the Agreement, the Authority Board retains its sole discretion to offer Authority membership to an eligible entity. Should the Authority Board elect to offer a membership in the Authority to the requesting party, the requesting party shall then be required to execute the Agreement and do all things necessary to remain in good standing as described in Section 8.1 below. Membership in the Authority does not guarantee a new Authority Member's ability to enter into the Benefits & Obligations Contract and, by extension, membership on the Reservoir Committee.

Authority Membership may be extended in the manner provided for in Section 3.3 of the Agreement to a non-profit mutual water company that complies with the Authority membership requirements.

7.2. Project Participant: An agency, entity or company that is described in Section 3.7.

7.3. State and Federal Partners:

As provided for in Section 3.2 of the Agreement, the Authority may enter into a State or Federal Contract, as applicable, with DWR and/or the Bureau of Reclamation (Reclamation). Pursuant to California Water Code § 79759(b), DWR shall be an Ex Officio Member of the Authority, but shall be non-voting and "shall not control the governance, management, or operation" of the Project. DWR shall not be a Project Participant.

8 Authority Member and Project Participant Requirements

- 8.1. Good Standing: To participate in their respective decision-making functions, each Authority Member and Project Participant is required to comply with the following conditions:

8.1.1. Compliance with, as applicable, the terms and conditions of the Agreement, these Bylaws, the Benefits & Obligations Contract, and any policies or procedures the Authority Board or the Reservoir Committee may adopt;

8.1.2. Providing timely payment of financial obligations, namely, (i) for Authority Members, general and administrative costs assessed by the Authority Board, and (ii) for Project Participants, payments required under the Benefits & Obligations Contract.

Failure to remain in good standing may subject the Authority Member or Project Participant to disciplinary action that, at the discretion of the Authority Board or Reservoir Committee, as the case may be, may include suspension of voting rights and/or removal from either the Authority and/or Reservoir Committee.

The Authority Board shall make determinations of good standing pertaining to the Authority Board and the Reservoir Committee. The Reservoir Committee shall make determinations of good standing pertaining to the Reservoir Committee.

- 8.2. Representation: An Authority Member's or Project Participant's decision to designate a representative to either the Authority Board or the Reservoir Committee shall be communicated in writing to the Secretary of the Authority Board and/or Reservoir Committee, as applicable. The written notification shall include an effective date of the designation.
- 8.3. Conflict of Interest: The Authority has adopted and may from time to time amended its Conflict of Interest Code adopted pursuant to the Political Reform Act of 1974 (Cal. Gov. Code §§ 87000 *et seq.*) and regulations adopted by the Fair Political Practices Commission set forth in Title 2, California Code of Regulations. Directors of the Authority Board and Reservoir Committee representatives shall comply with such Code and Political Reform Act and other laws applicable to conflicts of interest.

9 Committees

- 9.1. Common: Each committee of the Authority or the Reservoir Committee shall have a chartering document approved by the Authority Board or Reservoir Committee, which will include, among other things, quorum and discussion protocols for conduct of meetings of the committee.

- 9.2. Committees:

9.2.1. Each committee of the Authority Board shall comprise less than a quorum of the Authority.

9.2.2. Each committee of the Reservoir Committee shall comprise less than a quorum of the Reservoir Committee.

9.2.3. Standing Committees: Either Chair may elect to create standing committees as necessary to ensure successful completion of the Authority's mission.

9.2.4. Ad-Hoc Committees: Either Chair may elect to create ad-hoc committees to address specific issues or area of concern to the Authority Board or Reservoir Committee.

10 Authority Board's Reserved Powers and Delegation of Authorities to Reservoir Committee

- 10.1. Reserved Powers: Article 2 of the Agreement sets forth the Authority Board's "Reserved Powers" relative to the Project and the manner in which those powers may be exercised.

- 10.2. Delegated Authorities: As provided in Section 3.5 of the Agreement, all such powers that are not Reserved Powers are the "Delegated Authorities" of the Reservoir Committee. Such Delegated Authorities include the following:
 - 10.2.1. Plan, develop and approve annual operating budget for the Project for consideration by the Authority Board, which consideration is subject only to the limitations identified in Section 2.3.9 of the Agreement.
 - 10.2.2. Plan, approve and oversee Project work plans.
 - 10.2.3. Approval of contracts for consulting services, construction contractors, vendors, and other service providers related to Project implementation.
 - 10.2.4. Oversight, evaluation, and enforcement of consultant contracts, including management of change orders and dispute resolution.
 - 10.2.5. Overall cost management to ensure obligations or commitments remain within each annually approved operating budget.
 - 10.2.6. Management and implementation of all aspects of Project design and construction.
 - 10.2.7. Compliance with auditing and accounting requirements applicable to the Authority.
 - 10.2.8. Ensuring compliance to meet commitments set forth in State and Federal Contracts, and permits.
 - 10.2.9. Policy direction over activities to meet commitments set forth in applicable Federal and State permits, rules and regulations.
 - 10.2.10. Adoption of, implementation of, and amendments to, the Operations Plan identified in the Benefits & Obligations Contract.

- 10.3. To the extent action of the Authority Board is reasonably necessary to effectuate the Reservoir Committee's exercise of its Delegated Authorities, the Authority Board shall take such action without condition or delay absent the Authority Board's demonstration that the action would either (1) be contrary to the law, including rules provided for under any Project permit or entitlement, or (2) violate any contract, including, without limitation, the Benefits & Obligations Contract or a State or Federal Contract. Such action includes, without limitation and by way of example only, approval of a notice of award or execution of a consultant's contract for services upon the Reservoir Committee's selection of a consultant pursuant to Section 10.2.3 above.

- 10.4. Provided that the Reservoir Committee's exercise of its Delegated Authorities does not also qualify as a Material Change and Shared Decision defined in Section 12 below, such exercise is subject to a weighted majority vote of the Reservoir Committee.

- 10.5 In no event shall the Reservoir Committee's inaction or decision not to undertake the exercise of a Delegated Authority be construed as the Reservoir Committee's waiver of a Delegated Authority, or as authorization for the Authority Board to exercise a Delegated Authority.

11. Authority Board and Reservoir Committee Delegations to Authority Executive Director

The Executive Director shall have general operational responsibility relative to the Project, including but not limited to the management and evaluation of Project consultants and contractors, administration of the annual Project budget as approved by the Authority Board and Reservoir Committee and implementing the Project in accordance with policy direction given by the Authority Board and/or Reservoir Committee. The specific authorities of the Executive Director will be set forth in a delegation of authority matrix that the Authority Board and Reservoir Committee may amend from time to time. The delegation of authority matrix will be a joint document and will describe the authorities for decision-making between each body and the Executive Director and as it relates to shared decision making.

12 Material Changes and Shared Decision Making

- 12.1. These provisions shall apply to decisions where the Authority Board and the Reservoir Committee are required to make joint decisions.
- 12.2. As the Project progresses, what constitutes a Material Change and Shared Decision along with the associated thresholds for a Material Change and Shared Decision may require amendment to these Bylaws.
- 12.3. The following constitute Material Changes which require Shared Decision making, and require a seventy-five percent (75%) vote of both the Authority Board and the Reservoir Committee to take a formal action or make a policy decision:
- 12.3.1. Decisions involving acquisition, use, and disposition of lands owned by the Authority.
 - 12.3.2. Local agreements, including, without limitation, land acquisition agreements, land management agreements and Partner Agreements.
 - 12.3.3. Changes to the Sites Water Right.
 - 12.3.4. Changes to the Project that affect the operations of existing shared conveyance facilities owned and/or operated by Authority Members or other entities, and any amendments to Partner Agreements resulting from such operational changes.
 - 12.3.5. Changes to environmental permits and approvals.
 - 12.3.6. Changes in local Capacity Interest representation as delineated in the Benefits & Obligations Contract, local interests being those of the Sacramento Valley agencies.
 - 12.3.7. Recreation management.
 - 12.3.8. Amendments to these Bylaws.

12.3.9. Amount or terms of debt assumed by the Authority, or other financing instruments secured by the Authority.

12.3.10. A decision to terminate the Project.

12.3.11. Formation of a new Joint Powers Authority in the event of termination of the Agreement, as provided for in Section 7.1.1 therein.

12.3.12. Execution of a new Benefits & Obligations Contract, or authorization of assignment of Capacity Interest.

12.3.13. Establishment of or changes to risk management policies.

12.3.14. Statewide outreach, legislative affairs and public relations

12.3.15. Decisions concerning litigation, including (1) whether to file litigation, (2) legal representation, (3) litigation strategy, and (4) settlement terms.

12.3.16. Selection and performance review of Executive Director.

12.3.17. Selection and performance review of General Counsel and all special counsel, with the understanding and acknowledgement that the client of the General Counsel and special counsel is the entire Authority, including the Reservoir Committee.

12.4. The foregoing is intended to be an exhaustive list of Material Changes and Shared Decisions.

13 Dispute Resolution

13.1. Any dispute between and among Authority Members shall be addressed in the manner provided for in the Agreement.

13.2. Any disputes between the Authority Board and a Project Participant or group of Project Participants shall be addressed in the manner provided for in the Benefits & Obligations Contract.

13.3. Any dispute between the Authority Board and the Reservoir Committee (a "Dispute") shall be managed as follows:

13.3.1. A party that has identified a Dispute shall, within fifteen (15) days of the event giving rise to the Dispute, provide the Executive Director a written notice of the Dispute. The Executive Director shall investigate the merits of the Dispute and notify the Reservoir Committee and Authority Board of the Executive Director's findings as to the merits of the Dispute and any recommended action for resolving the Dispute.

13.3.2. Should the party that has lodged the Dispute disagree with the Executive Director's assessment or proposed resolution, its remedy shall be as follows:

(a) The Chair of the Authority Board and the Chair of Reservoir Committee shall each designate representatives to undertake Dispute resolution discussions among Authority Board representatives, Reservoir Committee representatives, and the Executive Director. Such designation can include the Chairs themselves, and must include less than a quorum of each body.

- (b) If said Dispute is not resolved within 30 (thirty) calendar days through informal discussions among the Executive Director and the designated representatives, either the Authority Board or the Reservoir Committee may, upon approval of seventy-five percent (75%) of its membership, submit the Dispute to formal mediation. The parties shall agree to the choice of mediator, or, if the parties cannot agree upon a mediator, one shall be appointed by the Superior Court of Colusa County upon motion for appointment of a neutral mediator. The cost of mediation shall be split evenly between the Authority Board and the Reservoir Committee.
- (c) If the mediation process does not provide a final resolution to the Dispute raised, either the Authority Board or the Reservoir Committee may submit the matter to binding arbitration under Section 1280 et seq. of the Code of Civil Procedure. Notwithstanding the foregoing, either the Authority Board or the Reservoir Committee may seek a preliminary injunction or other interlocutory judicial relief prior to completion of the mediation or arbitration process if necessary to avoid damage or to preserve the status quo.

14 Interpretation

These Bylaws, the Agreement and the Benefits & Obligations Contract are to be interpreted in a manner that attempts to reconcile each with one another, and afford the terms of each the fullest possible effect. In no event shall any such interpretation be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event of a conflict between these Bylaws and the Agreement, these Bylaws shall control. In the event of a conflict between these Bylaws and the Benefits & Obligations Contract, the Benefits & Obligations Contract shall control. Upon the identification of any conflicting terms in the foregoing, the Authority Board and Reservoir Committee shall undertake prompt and good faith efforts to eliminate such conflicting terms in a manner consistent with the governance structure provided for in the Agreement and these Bylaws.