

**Requested Action:**

Receive and comment on the preliminary draft final project contract documents (dated April 2025) including the Benefits & Obligations Contract, updated Bylaws, and amended and restated Joint Powers Agreement. Receive a status report on payment methods from representative Board members.

**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 contract documents, including the governance structure for Phase 3, 4, and 5. The latest drafts of all three documents, including an updated Frequently Asked Questions (FAQ) document, were released in August 2024. At that time the Board directed Staff to continue to work through existing Committees/Workgroups to resolve the four items that remained unresolved. These items have been considered and resolved to the point where the Committees/Workgroups are presenting their recommendations in this April 2025 update of the contract documents (Attachments A-C) including:

1. **Project Governance:** The proposal to resolve the durability of the delegated authorities includes the following additions and changes:
  - Recognize the changed nature of the authorities of the Reservoir Committee elevating status from advisory to board level and rename to the Reservoir Management Board (RMB). All signatories to the B&O, with the exception of DWR as the Acquirer, are represented with a seat on the RMB and that agency's allotted voting weight (see Attachment D - table of current vote weights). See Section 3.8 of Bylaws.
  - Clarify that the RMB's delegated authorities are inclusive of all design, construction, operating and maintenance decisions on the Project, while making joint decisions with the Authority Board (AB) under specified material change circumstances. The Authority Board can only override an RMB decision under specified circumstances: either when the RMB decision violates law or the decision causes breach of a contract between the Authority and another party. See Section 3.5 of JPA and Section 3.8 of Bylaws.
  - Allow eligibility to all RMB members as Associate Members of the Authority Board with specified attributes of RMB Associate Members, including specific exclusion of RMB Associate Members from any vote

- of the Authority Board. This puts into contract the current practice of joint board meetings. See Section 3.4 of JPA and Section 7.4 of Bylaws.
- Specify that any proposed amendments to the contract documents to remove or change any authorities delegated to the RMB or add any new reserved powers of the AB potentially affecting the RMB's delegated powers, must achieve RMB approval and be subject to higher RMB voting thresholds than that which is specified for other decisions (either 75% of weighted vote or majority rules). The proposed higher threshold voting criteria are twofold: i) at least 15% weighted vote of the RMB in opposition of the proposed amendment(s) AND ii) 2 or more RMB members voting to block the proposed amendment(s). If both criteria are achieved in the RMB vote, the proposed amendment(s) would not go into effect. Any attempt by either board to change delegated authorities without the other board's approval would be invalid and constitute a breach of contract. See Section 8.2 of JPA and Sections 1.4 and 12.3.8 of Bylaws.
  - Incorporate the same higher RMB voting thresholds as amending delegated authorities to shared decisions related to financing/incurred debt and initiating/defending litigation. See Sections 12.3.9 and 12.3.15 of Bylaws.
2. **The "Default Waterfall":** Participants have expressed concerns about their exposure to a disproportionate share of obligations if one or more of the Participants default. To date there have been no clarifications or details provided to explain this concern and no specific suggested language changes have been provided to address this in the contract documents. Staff assumes this issue is closed unless otherwise advised by Participants.
3. **Treatment of Downstream Capacity:** There is apparent concern that the B&O Contract does not include adequate specificity of the initial allocation of Downstream Capacity and process for future adjustments as new participants join the Project or temporary uses occur. In addition, there is apparent interest in seeing the Sites Operations Plan establish planned operating parameters for use of Downstream Conveyance Capacity. This topic was discussed with the Operations and Engineering Workgroup in April 2025 and based on the discussion there appears to be an approach that will lead to closure of this issue. Proposed next steps are as follows:
- The existing B&O language aligns with the general direction received but will need to incorporate minor clarifications to describe the initial allocation of responsibility for cost of the Downstream Facilities and first priority to utilize those facilities and how those allocations will change over time as Participants buy and sell Base Capacity Interests. .
  - Present an updated version of the Sites Reservoir Operations Plan (version 2.1) as part of the May 2025 agenda packet.
4. **Conditions Precedent to Construction and "off-ramps":** Various uncertainties and risks that may occur (see Attachment E) after the execution of the B&O

were assessed. It is proposed that the following condition be added to the contract documents:

- Incorporate a condition that the vote of the RMB to authorize construction contracts under Section 3.2.1 of B&O Contract be applicable to any construction contract causing the total authorized construction expenditures (as defined in B&O) to be in excess of a cumulative total of \$500m would be subject to the same higher RMB voting thresholds as amending delegated authorities. See Section 10.2.3 of Bylaws.

This timing aligns with the Project's broader schedule for getting to investor commitment following the water right decision being issued, which is now expected in September 2025.

Before the investor commitment period (to be initiated following water right issuance) and prior to “escrow freeze”, the final draft of contract documents will be provided to Participants for a final check in October 2025. Changes to participation levels or requirements of new/modified contract document terms anytime following these April 2025 final drafts becomes increasingly difficult to navigate without delay and extra cost as the contents of these documents are heavily dependent on the mix of Participants and require agreement by all Participants.

The Participants are strongly encouraged to ensure their “within agency” reviews and Sites business case analyses are completed in a timely manner relative to the start of investor commitment. Working backwards from this point, a target of July 2025 appears appropriate for each Participant management staff to be confident in its Sites participation and that agency management staff are prepared to make its staff recommendation to its Board during the investor commitment escrow period. The multi-Participant decision-making process is cumbersome and must proceed in a coordinated, orderly fashion for a successful and efficient outcome. The six-month investor commitment period does not leave a lot of leeway for disruptions and the current Authority budget is projected to be fully expended around June 2026.

**Prior Action:**

December 2024 - Received an update on the development of the Benefits & Obligations Contract, Amended and Restated Joint Powers Agreement, and Phase 3, 4, 5 Bylaws.

**Fiscal Impact/Funding Source:**

The Amendment 3 Work Plan includes sufficient budget to cover required resources and activities to finalize 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 still believed to be sufficient to cover finalizing these documents.

**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  
Attachment B – Draft Joint Powers Agreement Amendment  
Attachment C – Draft Bylaws Amendment  
Attachment D – Voting Weights  
Attachment E – Considerations  
Attachment F – Updated FAQ to accompany April 2025 Draft.

[Note: The Benefits and Obligations Contract is 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 Participants, Acquirer and Sites Authority**

**Dated as of [\_\_\_\_], 2025**

**[Board Report Draft: April 15, 2025]**



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Appendix 7	Payment Appendix
Appendix 8	Initial Sites Operations Plan

**Draft Sites Reservoir Benefits & Obligations Contract Between the 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 with respect to the Project. Unless the context otherwise requires, capitalized acronyms, abbreviations and terms used in this Contract shall have the meanings given in Appendix 1.

**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 Authority JPA Agreement. The Sites Authority was established for the purpose of designing, constructing, owning, operating and maintaining the Project. The JPA Agreement together with the Phase 3-4-5 Bylaws are in full force and effect as at or prior to the date of this Contract.

B. The Project Facilities consist of Sites Owned Facilities and Partner Facilities.

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 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 and Governmental Approvals (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,, (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 Storage Partners and in accordance with this Contract.

E. The Sites Authority will grant each Storage Partner, and each Storage Partner will own a Base Facilities Capacity Interest. Each Participant will receive certain benefits and have certain obligations in accordance with this Contract. Storage Partners who request it, will also be granted a Downstream Facilities Capacity Share 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.

G. DWR will acquire Sites Water on behalf of the SWP Participants as the Acquirer and convey Sites Water through the State Water Project Facilities as further described in Section 1.3 of this Contract.

H. The Sites Authority intends to enter into certain agreements and contracts with State and Federal agencies pursuant to which the State and Reclamation will receive certain benefits (including water service) and have certain obligations related to the Project. These include the (i) Reclamation Partnership Agreement (i) State and Federal Operations Agreement; (iii) Public



Benefits Agreements with State Agencies; and (iv) Proposition 1 Water Storage Investment Program Contract with the California Water Commission.

In consideration of the above Recitals and of the mutual promises and agreements contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, 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 except to the extent set out in Section 1.1.1(a)(iii));

(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 except to the extent set out in Section 1.1.1(a)(iii));

(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 lawfully 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 from highest to lowest shall apply:

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

1.1.4 The Sites Authority Board, each Participant and the Acquirer 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 Interpretation

In this Contract, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 references to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to;
- 1.2.3 the words “including,” “includes” and “include” are deemed to be followed by the words “without limitation”;
- 1.2.4 a reference to a Section is a reference to a Section of this Contract;
- 1.2.5 a reference to any entity includes such entity’s successors and permitted substitutes and assigns; and
- 1.2.6 words of any gender used in this Contract shall include each other gender where appropriate.

## 1.3 Role of State of California in Project

- 1.3.1 By entering into this Contract:
  - (a) DWR agrees to fulfill the role of Acquirer on behalf of the SWP Participants and perform the obligations set out in this Contract provided that DWR’s financial obligations under this Contract are limited to funding provided to it by the SWP Participants;
  - (b) DWR will acquire Sites Water on behalf of the SWP Participants and convey Sites Water through the State Water Project Facilities, under separate agreement(s), for delivery, as required by the SWP Participants and approved by DWR;
  - (c) DWR will be an ex-officio member of the Sites Authority per California Water Code Section 79759;

- (d) DWR will coordinate with Sites Authority and SWP Participants on scheduling and approval of any delivery of Sites Water in accordance with such Participants' respective contracts with DWR; and
- (e) DWR may convey Water through the State Water Project Facilities in accordance with applicable contracts with DWR.

1.3.2 DWR is a State agency within the California Natural Resources Agency responsible for owning, constructing, operating and maintaining the State Water Project Facilities and oversees these storage and conveyance facilities located throughout California. Acting under its State Water Project authorities, DWR may participate in water rights proceedings involving the Project or enter into contracts with the Sites Authority, and this Contract does not affect or limit DWR's ability to engage in these activities.

1.3.3 DWR also has the responsibility under Proposition 1 in California Water Code to enter into Public Benefit Agreements, including with the Sites Authority, provided certain requirements are satisfied. The responsibilities to enter into Public Benefits Agreements are separate from DWR's role as an ex-officio member of the Sites Authority, and this Contract neither constitutes a Public Benefit Agreement nor affects DWR's ability to enter into such agreements.

1.3.4 DWR has other responsibilities under State law for water management in the State, including relating to flood management and dam safety, that may relate to the Project, and this Contract does not affect or limit DWR's responsibilities under these laws.

1.3.5 Except where the Acquirer has a right, obligation or liability expressly stated in this Contract, DWR shall have no rights, obligations or liabilities under this Contract.

#### 1.4 Colusa County / Sites Authority MOU

This Contract incorporates in the Colusa County / Sites Authority MOU in its entirety by reference.

### **SECTION 2. TERM; PRIOR AGREEMENTS; RESERVOIR MANAGEMENT BOARD; 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 and the Acquirer; and
  - (ii) State and Federal Contracts by the Sites Authority, Reclamation and the

State,

collectively representing Capacity 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 and the Acquirer of (i) an opinion from an attorney or firm of attorneys in substantially the applicable form attached as Appendix 5-1 or Appendix 5-2 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 this Contract and delivery to such Participants of an opinion for the Sites Authority of special counsel and general counsel to the 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 the Acquirer, 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 have their obligations under this Contract.

2.1.3 Section 1, Section 2, Section 3.4, Section **Error! Reference source not found.**, 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 Acquirer, the Sites Authority, Reclamation and the State (in their capacities as signatories to the State and Federal Contracts), have complied with Section 2.1.2, 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 Reclamation (in their capacities as signatories to the State and Federal Contracts), 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 and Share 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 and all obligations identified in the Interim Agreements have been fulfilled. Such Interim Agreements shall have no force or effect on this Contract or the construction, and operation of the Project, including its governance.

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 Storage Partners under this Contract for their respective Fixed Project Costs.

2.4 Reservoir Management Board

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

## 2.5 Payment Appendices

2.5.1 Subject to Section 2.5.2, if at any time a Participant elects to change its source of payment for Fixed Project Costs which election shall be subject to the Sites Authority's approval, in its reasonable discretion, such Participant shall provide to the Sites Authority an executed version of the applicable Payment Appendix reflecting such change.

2.5.2 If any Project Obligation under a Financing Agreement is outstanding (but only to the extent required under such Financing Agreement), a Participant's election to change its source of payment for Fixed Project Costs shall be subject to the terms of such Financing Agreement, including the right of the applicable Lender to consent to such change, if any.

## **SECTION 3. PROVISIONS APPLICABLE TO DEVELOPMENT, CONSTRUCTION AND OWNERSHIP**

### 3.1 Obligation of the Sites Authority to Construct and Complete the Project

3.1.1 Subject to compliance with all Applicable Law and Governmental Approvals, the 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 Management Board have not mutually determined the Project to be infeasible and impractical in accordance with Section 4.12.

3.1.2 By this Contract taking effect and the Sites Authority accepting payments from Participants and the Acquirer, the Sites Authority does not warrant that it will construct and achieve Completion.

### 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 Subject to Section 3.2.2, the Sites Authority shall commence construction, through execution of a Construction Contract of all or a portion of the Project, upon satisfaction of the following conditions:

- (a) the Sites Authority Board's execution of the Construction Contract, provided such action 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 Management Board confirming commencement of all or a portion of construction under that Construction Contract; and (ii) Governmental Approvals [and any

necessary Partner Agreements] required to commence all or a portion of construction by the Sites Authority.

3.2.2 Where the total cost of construction authorized by the Board under one or any combination of construction contracts will exceed \$500,000,000, the Reservoir Management Board shall provide a one time certified resolution authorizing further construction of the Project in accordance with the Sites Authority Bylaws before further construction may proceed.

3.2.3 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 Management Board, and (b) with or without conditions by the Sites Authority Board and Reservoir Management Board, and (c) without any action of the governing body of any individual Participant.

### 3.3 Construction Progress Reports

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

### 3.4 Ownership of Project Assets

Subject to Section **Error! Reference source not found.**, the Sites Authority shall own all Project Assets (excluding the Partner Facilities).

### 3.5 Base Facilities Capacity Interest

The Sites Authority hereby grants to each Participant, and each Participant shall own, a Base Facilities Capacity Interest in the amounts described in the Project Specific Information and otherwise in accordance with this Contract.

### 3.6 Downstream Facilities Capacity Share

The Sites Authority shall allocate to each Participant who requests to participate in the funding and use of Downstream Facilities, a Downstream Facilities Capacity Share in the amounts described in the Project Specific Information and otherwise in accordance with this Contract.

### 3.7 Updates to Project Specific Information and Sites Operations Plan

3.7.1 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.

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

- (a) the Project Specific Information to reflect (i) any changes in each Storage Partner's Capacity Interest and Share percentage as a result of sale or acquisition of Base Facilities Capacity Interest and change, if any, in Downstream Capacity Share resulting from such sale or acquisition in accordance with Section 8, any acquisition or disposition of Base Facilities Capacity Interest in accordance with

Section 10, or any other changes in Capacity Interest and Share 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 changes, if any, to the Sites Operations Plan made in the prior year.

## **SECTION 4. PROVISIONS APPLICABLE TO OPERATIONS AND MAINTENANCE**

### **4.1 Obligation of the Sites Authority to Operate and Maintain the Project**

4.1.1 Subject to compliance with all Applicable Law and Governmental Approvals, the 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 and the Acquirer provide all funding required under this Contract for operations and maintenance; and (ii) the Sites Authority and the Reservoir Management Board have not mutually determined the continued operation of the Project is infeasible and impractical.

4.1.2 The Sites Authority shall protect the Sites Water Right and manage, control and protect Sites Water in accordance with Good Industry Practice. The Parties agree that maximizing diversions and beneficial use under the Sites Water Right is in the best interest of all Parties. Subject to compliance with all Applicable Law, Governmental Approvals, Good Industry Practice and Section 8, the Sites Authority and the Participants agree to take reasonable steps to optimize the diversion and beneficial use of Sites Water.

### **4.2 Sites Operations Plan**

4.2.1 Each Participant and the Acquirer acknowledges and understands that the storage and conveyance of Water through the Project Facilities consistent with each Storage Partner's Capacity Interest and Share 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 Management Board 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 updated Sites Operations Plan will be 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 or the State or Federal Contracts (as applicable) to control its respective Base Facilities Capacity Interests, or its ability to have Sites Water diverted into, stored in, or released through the Project Facilities on a pro-rata and substantially similar basis with other Storage Partners taking into account each Storage Partner's Base Facilities 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 Management Board 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 and Share

Each Participant acknowledges and agrees:

4.3.1 that its Capacity Interest and Share shall only be used for the storage and conveyance of Sites Water, or storage and conveyance of Other Water which may be stored in and conveyed through the Project Facilities in accordance with Applicable Law, Governmental Approvals and the Sites Operations Plan;

4.3.2 that except as set out in Section 8, it may not use another Storage Partner's Capacity Interest and Share for the storage and conveyance of Sites Water or Other Water, provided that Storage Partners with unused conveyance capacity shall permit other Storage Partners to use such unused conveyance capacity in accordance with Applicable Law, Governmental Approvals and the Sites Operations Plan;

4.3.3 that it shall utilize Sites Water in accordance with Applicable Law and Governmental Approvals and shall timely provide any information the Sites Authority may need to comply with Applicable Law and Governmental Approvals as described in the Sites Operations Plan; a

4.3.4 that it shall make reasonable efforts to optimize diversion and beneficial use of Sites Water during the Sites Water Right Development Period and shall not interfere with the Sites Authority's efforts to optimize diversion and beneficial use of Sites Water during the Sites Water Right Development Period;

4.3.5 Storage Partners who hold a Downstream Facilities Capacity Share have first priority to use the Downstream Facilities as described in the Operations Plan; and

4.3.6 Storage Partners who do not hold a Downstream Facilities Capacity Share shall have second priority to use of the Downstream Facilities as described in the Operations Plan.

#### 4.4 Storage and Release of Sites Water

4.4.1 Subject to Applicable Laws and Governmental Approvals, the diversion of Sites Water to storage will take priority over the release of Water. Sites Water diverted by the Sites Authority will be allocated to Storage Partners in Sites Reservoir based on each Storage Partner's Base Facilities Capacity Interest up to the Storage Partner's Storage Allocation, including any Storage Allocation leased, or acquired by such Storage Partner in accordance with Section 8 of this Contract. If a Storage Partner's Storage Allocation is not available or is full, then diverted Sites Water will be allocated to the remaining Storage Partners who have available Storage Allocation in proportion to their Storage Allocation. Notwithstanding the foregoing, Sites Water originating from Funks Creek and its tributaries, Stone Corral Creek and its tributaries, and the watershed of Sites Reservoir shall be allocated consistent with the Colusa County/Sites Authority MOU.

4.4.2 In accordance with the timing and process described in the Sites Operations Plan and Section 4.3, each Participant shall provide the Sites Authority with (i) a projected request for Sites Water the Participant seeks to have stored in the Project ("**Storage Opportunity Request Form**"), which, when added to such Participant's Stored Water, shall not exceed the sum of (a) that Participant's Storage Allocation; and (b) any other Storage Allocation shared, leased or



acquired by such Participant in accordance with Section 8 of this Contract; and (ii) a projected schedule for releases of such Participant's Stored Water ("**Release Request Form**").

4.4.3 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 Sites Water to the Participant will be consistent with the Participant's Capacity Interest and Share, Storage Partner's Stored Water, Storage Allocation and the Sites Authority's overall delivery ability, considering the then current delivery schedules of all Storage Partners. 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 Storage Partner's rights under this Contract or the State and Federal Contracts (as applicable) to control its Capacity Interest and Share, or its ability to have Water diverted into, stored in, or released through the Project Facilities in accordance with its Capacity Interest and Share on a pro-rata and substantially similar basis with other Storage Partners.

4.4.4 All Storage Partners shall bear the risk of loss of Sites Water and any shortfall or reduction in Sites Water as set out in the Sites Operations Plan.

4.4.5 The Project provides water supply and water supply related environmental benefits, including water quality benefits, as well as flood control, recreation, and power generation benefits. The Project will be operated so as to maximize the water supply and water supply related environmental benefits while continuing to provide the flood control and recreational benefits.

#### 4.5 Other Water

4.5.1 Subject to Applicable Law and Governmental Approvals, all Storage Partners may store Other Water in, or convey Other Water by use of the Storage Partner's respective Capacity Interest and Share in the Project Facilities as described in the Sites Authority Bylaws. The use of Project Facilities for Other Water must not negatively impact other Storage Partners' rights as set forth in this Contract or the State and Federal Contracts (as applicable), and shall be subject to the approvals as described in the Sites Authority Bylaws, and such approval shall not be unreasonably withheld. Any costs to the Sites Authority associated with Other Water shall follow Beneficiary Pays Principles, including if the Sites Authority is required to take actions to comply with Applicable Law or obtain or modify any new or existing Governmental Approvals.

4.5.2 The diversion and conveyance of Sites Water into Sites Reservoir will be prioritized over the diversion and conveyance of Other Water into Sites Reservoir.

4.5.3 Other Water shall accrue losses in a substantially similar manner as Sites Water and the Storage Partner seeking to store or convey Other Water shall bear the risk of loss of the Other Water and any shortfall or reduction in Other Water.

#### 4.6 Release of Water

4.6.1 The Delivery Point for Water shall be either Funks Reservoir or the Terminal Regulating Reservoir. The Sites Authority's obligations and responsibilities for Water terminate at the Delivery Point.

4.6.2 The Sites Authority will convey released Water through Project Facilities in accordance with the Sites Operations Plan. Storage Partners will specify a Secondary Delivery Point(s) in their respective Release Request Form as described in the Sites Operations Plan. The Sites Authority may take actions reasonably practicable to assist Participants in conveying their Water to a Secondary Delivery Point(s). Such actions taken by the Sites Authority are subject to Applicable Law, Governmental Approvals and Partner Agreements and Section 4.1.1(i). Participants shall bear all costs (monetary or otherwise), the risk of loss and any shortfall or reduction in Water between the Delivery Point and the Secondary Delivery Point(s). Any costs borne by the Sites Authority associated with delivering Water to the Secondary Delivery Point shall follow Beneficiary Pays Principles.

4.6.3 In the event that requests by Storage Partners for the conveyance of Water to, or release of Water from, the Project exceed 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; provided that Storage Partners have a right to use facilities necessary to convey Water to the Delivery Point in proportion to their Base Facility Capacity Interest; and to Downstream Facilities in proportion to their Downstream Facilities Capacity Share.

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.

4.6.5 The Participant shall indemnify the Sites Authority, its directors, officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising in connection with the control, carriage, handling, use, disposal, or distribution of Water beyond the Delivery Point, except for any damage or claim arising in connection with (i) acts or omissions of the Sites Authority or any of its directors, officers, employees, agents, and assigns with the intent of creating the situation resulting in any damage or claim; (ii) willful misconduct of the Sites Authority or any of its directors, officers, employees, agents, and assigns; (iii) negligence of the Sites Authority or directors, officers, employees, agents, and assigns; (iv) damage or claims resulting from a malfunction of Project Asset.

#### 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 used to offset Variable O&M Costs, and to the extent that such revenues exceed Variable O&M Costs in a Fiscal Year, any remaining revenues will be used to offset Fixed O&M Costs. Any such revenues will be allocated by the Sites Authority to Storage Partners in proportion to the amount of Water released on behalf of the Storage Partners during the Fiscal Year.

The Parties acknowledge and agree that the release of Water has a higher priority than the generation of power by Project Facilities and power generation is not guaranteed to Storage Partners with the release of Water.

#### 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, and at the Participant's expense, 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

The Sites Authority shall measure, or cause to be measured, Water and shall keep and maintain accurate and complete records of diversions, storage and release 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 and the Acquirer 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 and Water Quality

4.11.1 If for any reason other than those described in Section 4.10 there is a reduction in the Sites Water diversions or releases or other circumstances, which, notwithstanding preventive or remedial measures that the Sites Authority may or may not take in its sole discretion, threatens a permanent shortage in the supply of Sites Water to be made available to the Storage Partners, the Sites Authority will adjust the storage, diversion and release of Sites Water in accordance with the relevant Capacity Interest and Share.

4.11.2 Neither the Sites Authority nor any of its directors, 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 to the Participants under this Contract caused by non-availability of Water to the Sites Authority under the Sites Water Right (as applicable to Sites Water), Applicable Law, Governmental Approval or caused by drought, or any other cause beyond the Sites Authority's control.

4.11.3 The Sites Authority makes no representation, warranty or guarantee of the quality of Water delivered under this Contract.

#### 4.12 Governance

4.12.1 The Parties agree that:

- (a) the Sites Authority Board has reserved certain powers, as described in the JPA Agreement;
- (b) the Reservoir Management Board has been delegated exclusive decision-making authority for specified activities, as described in the Sites Authority Bylaws, which shall not be amended without approval of the Reservoir Management Board;
- (c) the Sites Authority and the Reservoir Management Board have shared decision-making authority for specified activities, as described in the Sites Authority Bylaws;
- (d) the Sites Authority Bylaws and the JPA Agreement set out voting procedures for amendment thereof that shall be complied with by all Parties; and
- (e) any Participant shall have the option to serve as an Associate Member of the Sites Authority Board, subject to the rights and limitations set forth in the Sites Authority Bylaws.

#### 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 Capital Improvement Plan

4.14.1 Every year starting at the Completion, the Sites Authority shall generate a five year forecast for all capital improvements including capital cost estimates for each improvement, any operating cost changes associated with the capital expenditure, and project funding prioritization for the Project Facilities subject to approval by the Reservoir Management Board and the Sites Authority (as applicable) as described in the Sites Authority Bylaws (“**Capital Improvement Plan**”). The approved Capital Improvement Plan shall be reflected in the annual budget. The Sites Authority shall make good faith efforts to include any activities that the Sites Authority reasonably anticipates would require amendment to the adopted annual budget for Project Costs for each Fiscal Year.

4.14.2 The Parties agree that additional activities, work or services may be required that were not contemplated in the Capital Improvement Plan. The Parties therefore agree to use best efforts and take reasonable actions to address and resolve any such increased or additional activities, work or services, and associated expenses.

### **SECTION 5. FINANCING OF THE PROJECT**

#### 5.1 The 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 and the Acquirer (as applicable) 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 Management Board.

## 5.2 Notice of Expected Incurrence of Sites Financing

5.2.1 The Sites Authority will provide written notice to the Participants [and the Acquirer (as applicable)] 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 and the Acquirer, as applicable, 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 and Acquirer 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 90<sup>th</sup> 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 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 and Share. 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 such Participant's Self-Funding 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 5.4.4, 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 The Acquirer shall be required to pay all Project Costs to the Sites Authority under this Section 6 on behalf of the SWP Participants provided that the Acquirer's financial obligations under this Contract are limited to funding provided to it by 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 March 1 of each Fiscal Year or such other date agreed in the Sites Authority Policies, the 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 (i) the following Fiscal Year and (ii) under this Contract, which statement may be used by Participants and the Acquirer for budgeting purposes.

6.2.2 In accordance with the timing required by the JPA Agreement, the Reservoir Management Board shall prepare and recommend, and the Sites Authority Board will adopt a



budget for Project Costs for the following Fiscal Year. Such budget shall include any costs associated with the Capital Improvement Plan.

### 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 Billing Party 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].

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 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

- (d) 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

BFPP = Base Facility Financing Participation Percentage

DFO = Financing Obligations allocable to Downstream Facilities

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:

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

Where:

FPC = Participant Fixed Project Costs

BFC = Fixed Project Costs allocable to Base Facilities

BCI = Each Participant's Base Facilities Capacity Interest

DFC = Fixed Project Costs allocable to Downstream Facilities

DCS = Each Participant's Downstream Facilities Capacity Share,

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:

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

Where:

FOMC = Fixed O&M Costs

BFOMC = Fixed O&M Costs allocable to Base Facilities

BCI = Each Participant's Base Facilities Capacity Interest

DFOMC = Fixed O&M Costs allocable to Downstream Facilities

DCS = Each Participant's Downstream Facilities Capacity Share

#### 6.7 Variable O&M Costs

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

$$\text{VOMC} = [(\text{PWP} / \text{TWP}) \times \text{BPVMOC}] + [(\text{PWR} / \text{TWR}) \times \text{BRVMOC}] + [(\text{PWRD} / \text{TWRD}) \times \text{DVOMC}]$$

Where:

VOMC = Variable O&M Costs

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

TWP = Total Water conveyed into Sites Owned Base Facilities

BPVOMC = Variable O&M Costs allocable to Water conveyed into Base Facilities

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

TWR = Total Water released from Sites Owned Base Facilities

BRVOMC = Variable O&M Costs allocable to Water released from Base Facilities

PWRD = Water released from Sites Owned Base Facilities that flows into Downstream Facilities attributable to a Participant

TWRD = Total Water released from Sites Owned Base Facilities that flows into Downstream Facilities

DVOMC = Variable O&M Costs allocable to Downstream Facilities

#### 6.8 Due Date and Method of Payments by Participants

6.8.1 Within 30 days after receipt of each Billing Statement:

- (a) each Financing Participant, and 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, and 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, and 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, and 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 the Sites Authority or any other Participant under this Contract or any other agreement.

6.8.4 The obligation of each Participant, and the Acquirer on behalf of the SWP Participants (but only from funds received from the respective 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) or any other amendment or waiver of or any consent to departure from any of the terms of this Contract 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 Subject to Section 10.3.6, each Participant and the Acquirer 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, and 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; provided that the Acquirer's obligation to make payments on behalf of the SWP Participants is only to the extent the Acquirer has received funds from the SWP 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 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, and 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, and the Acquirer in the case of the SWP Participants, to such Participant's and 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, and 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 supplemental 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 90 days after receipt of such Billing Statement; provided, however, that the Sites Authority shall not issue supplemental Billing Statements for any charges 3 years or more after the underlying costs for such supplemental Billing Statements were incurred by the 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 supplemental 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 or the Acquirer questions or disputes the correctness of any Billing Statement by the Sites Authority, such Participant and the Acquirer on behalf of the SWP Participants 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 or the Acquirer, as applicable, in the next applicable Billing Statement. If the Sites Authority and the Participant or the Acquirer,

as applicable, fail to agree on the correctness of a bill within 30 days after the Participant or the Acquirer, as applicable, has requested an explanation, the Sites Authority and such Participant or the Acquirer shall use the dispute resolution process 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 and the Acquirer, 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, 2025]) financial statements of the Sites Authority for the preceding Fiscal Year prepared by a recognized independent auditor 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 and the Acquirer. If requested by Participants holding at least [  %] of the Base Facilities Capacity Interest, the independent auditor will also audit annual invoices for that fiscal year.

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 and the Acquirer on behalf of the SWP Participants in accordance with this Contract in accordance with the Master Resolution.

7.1.4 The Sites Authority shall maintain all records related to the Project for a minimum period of 10 years after Completion, or, in the case of records related to any Project Obligations, for a period as required by the terms of such Project Obligations.

## **SECTION 8. LEASING OR SALE OF CAPACITY INTEREST AND SHARE AND SALES OF WATER**

**[Note: It is expected that similar provisions will be included in the State and Federal Contracts as it relates to the State and Federal parties obligations to sell, lease or exchange]**

### **8.1 Lease or Sale of Capacity Interest and Share by Participants**

8.1.1 Participants may: (i) lease Capacity Interest and Share; or (ii) sell all or a portion of their Base Facilities Capacity Interest, with other Storage Partners and with other entities subject to the following conditions:

(a) each Participant may negotiate in its discretion the commercial terms of the lease or sale of its Capacity Interest and Share ("**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, or the rights of Storage Partners to store or convey Water in accordance with the State and Federal Contracts (as applicable);

(ii) any (i) lease of Capacity Interest and Share; or (ii) sale of Base Facilities 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 (i) lease of Capacity Interest and Share; or (ii) sale of the Base Facilities Capacity Interest shall not impact or limit a Participant's rights or obligations to the Sites Authority under this Contract and each Participant shall remain responsible for all of its obligations to the Sites Authority under this Contract;

(iv) no (i) lease of Capacity Interest and Share; or (ii) sale of a Participant's Base Facilities Capacity Interest can cause or be construed to cause a reduction in any Project Obligation bond credit rating or put the tax exempt borrowing status of the Sites Authority in violation of the Internal Revenue Code of 1986, as amended, as reasonably determined by the Sites Authority;

(v) no agreement for a lease of a Participant's Capacity Interest and Share shall be for a term of longer than 10 years, nor shall it provide for any renewal of a term in a manner that would result in a lease having an effective term in excess of 10 years; provided, however, that this limitation shall not apply to Colusa County's lease of storage for "creek water", as that term is described and used in the Colusa County / Sites Authority MOU, nor shall any such lease be subject to the terms and conditions of Section (vii) below; and provided further that if an agreement for a lease of a Participant's Base Facilities Capacity Interest is for a term of longer than 10 years, such agreement shall be subject to the same terms and conditions of this Section 8.1 as are applicable to the sale of Base Facilities Capacity Interest provided that any lease of a Downstream Facilities Capacity Share longer than 10 years shall not be permitted. If any lease of Base Facilities Capacity Interest is to a Participant with a Downstream Facilities Capacity Share, the Sites Water may be conveyed on a first priority basis up to the Downstream Facilities Capacity Share. Should the Participant wish to convey more Sites Water] than its Downstream Facilities Capacity Share allows, this would be on a second priority basis and would incur wheeling costs [on a per Acre-foot basis] as described in the Operations Plan. Leases to non-Participants would be provided access to Downstream Facilities on a second priority basis and incur a wheeling costs [on a per Acre-foot basis] as described in the Operations Plan. **[Note: The 10 year restriction on leases above shall also not apply to leases by Reclamation. This will be reflected in the Reclamation Partnership Agreement];**

(vi) subject to Section 8.1.4, prior to any (i) sale by a Participant of Base Facilities Capacity Interest; or (ii) lease by a Participant of Base Facilities Capacity Interest and Downstream Facilities Capacity Share, the selling or leasing 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

(vii) any sale must be approved by the Reservoir Management Board and the Sites Authority (as applicable) consistent with this Section 8.1.1(a) and the Sites Authority Bylaws, such approval not to be unreasonably withheld or delayed by the Sites Authority;

(b) any lease or sale of Base Facilities Capacity Interest and Downstream Facilities Capacity Share (as applicable) shall be confirmed with staff of the Sites Authority verifying that Project operations and Water accounting may be maintained and any lease or sale of Capacity Interest by or to any SWP Participants shall also be coordinated with the Acquirer;

- (c) any sale or lease agreement for Capacity Interest and Share must acknowledge that conveyance constraints will limit withdrawals from the Project Facilities from time to time, and must specify 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 Management Board and the Sites Authority;
- (d) as a condition of any Participant selling or leasing all or a portion of its Capacity Interest and Share, and in the case of a sale, of the Sites Authority signing the Contract with the purchaser of the Capacity Interest and Share, the Participant must first pay any amounts due to the Sites Authority under this Contract; and
- (e) where a Participant proposes to (i) sell Base Facilities Capacity Interest; or (ii) lease Base Facilities Capacity Interest and Downstream Facilities Capacity Share to a non-Storage Partner, 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 Storage Partners holding a Capacity Interest and Share 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, including, for a proposed lease, the duration of the lease. The Storage Partners shall have a “right of first refusal” with respect to the sale or lease of such Capacity Interest and Share on the terms provided in the Offer Notice. Each Storage Partner shall respond to such terms in writing within 60 days of receipt of the Offer Letter or such longer time proposed by the selling Participant, and a failure to so respond shall be deemed a waiver of such Storage Partner’s right to first refusal with regard to the transaction set forth in the Offer Notice. If the terms presented to the Storage Partners in the Offer Notice are changed in any material way following provision of the Offer Notice to the non-selling Storage Partners, the selling Participant will provide a revised Offer Notice and the non-selling Storage Partners 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 Storage Partners timely notifies the Selling Participant of such non-selling Storage Partner’s interest in purchasing or leasing the Capacity Interest and Share upon the terms set forth in the Offer Notice, the Capacity Interest and Share shall be apportioned *pro rata* based on the non-selling Storage Partner’s applicable Capacity Interest and Share in each of the Base Facilities and Downstream Facilities unless the non-selling Storage Partners 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).
- (f) Should a Participant without a Downstream Facilities Capacity Share wish to sell some or all of its Base Facilities Capacity Interest to another Storage Partner that will need to utilize Downstream Facilities to receive their Sites Water, the amount of first priority use for all Downstream Facility users will be adjusted by recalculating the Downstream Facilities Capacity Share in accordance with the formula set out in the Operations Plan. Prior to such sale, Sites Authority may assess a “buy-in” fee on the buyer that would be distributed to the Storage Partners with Downstream Facilities Capacity Share before the sale and subsequent reallocation. The “buy-in” fee would be based on the capital costs of the Downstream Facilities prior to the sale and, if assessed, is intended to compensate those Participants that funded the construction of the Downstream Facilities.,



8.1.2 In the event that a Participant leases its Base Facilities Capacity Interest and Downstream Facilities Capacity Share as described in Section 8.1.1(a), such leasing Participant shall remain signatory to its Contract with the Authority and shall continue to be 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 Base Facilities 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 related to such Base Facilities Capacity Interest until such time as the purchaser of such Base Facilities Capacity Interest has entered into this Contract.

8.1.4 If any Project Obligation under a Financing Agreement is outstanding (but only to the extent required under such Financing Agreement), any sale by a Participant of all or a portion of its Base Facilities Capacity Interest shall be subject to the terms of such Financing Agreement, including the right of the applicable Lender to consent to such sale, if any.

8.1.5 The Participant: (i) leasing Capacity Interest and Share; or (ii) selling Base Facilities Capacity Interest shall receive Sites Authority and Reservoir Management Board approvals, as necessary, prior to executing any agreements for sale or lease of Capacity Interest requiring such approvals under this Contract. The provisions for lease or sale specified in this Section 8.1 constitute all provisions necessary for the Sites Authority Board and Reservoir Management Board approving a sale or lease, and such approvals shall not be unreasonably withheld, conditioned or delayed.

## 8.2 Sites Water Sales or Exchanges

8.2.1 Participants may sell or exchange their Sites Water component of their Base Facilities Capacity Interest to other Storage Partners or other entities. The terms of sales or exchanges of Sites Water are at the sole discretion of the Participant, provided that:

- (a) terms must not negatively impact other Participants' rights as described in this Contract, the Sites Water Right or the rights of other Storage Partners as set out in their respective contracts;
- (b) notice of any sale or exchange shall be provided to the staff of the Sites Authority so that Project operations and Water accounting may be maintained;
- (c) any costs to the Sites Authority associated with any sale or exchange shall follow Beneficiary Pays Principles;
- (d) any sale by an SWP Participant shall be coordinated with the Acquirer; and
- (e) a Participant may not transfer or assign its Capacity Interest and Share or any other rights or obligations under this Contract as part of any sale or exchange, 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 sell any portion of its Capacity Interest and Share, directly or indirectly, or effect a change in the ownership

of its Capacity Interest and Share in any other 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 or the Acquirer 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 or the Acquirer. 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 (x) if a failure of the Acquirer to make a payment as described in Section 10.1.1(i) was caused by a failure of an SWP Participant to make a required payment to the Acquirer, such failure of the Acquirer may only be cured by payment from the applicable SWP Participant, and such failure shall not be a liability of the Acquirer; or (y) 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 and the Acquirer 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 and the Acquirer 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 Management Board 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 Management Board;
- (b) Capacity Interest and Share, such Participant's interest in Water and such Participant's right to convey 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 Management Board, and the Reservoir Management Board shall make determinations under this Section 10.2 pertaining to the Reservoir Management Board. 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 Management Board, 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 and Share, Interest in Water and Right to Convey Water

10.3.1 Upon a default and the termination of such Participant's Capacity Interest and Share in accordance with Section 10.2.1(b), the Sites Authority shall use its best efforts to facilitate a sale, for such Participant's account, of all or a portion of the Participant's Capacity Interest and Share, interest in Water and right to convey 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 Storage Partners holding a Capacity Interest and Share 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 Storage Partner purchasing all or a portion of the defaulting Participant’s Defaulted Interests. In the event that more than one non-defaulting Storage Partners wish to acquire the Defaulted Interests on the same terms, the Defaulted Interests shall be apportioned *pro rata* based on the non-defaulting Storage Partner’s applicable Capacity Interest and Share in each of the Base Facilities and/or Downstream Facilities unless the non-defaulting Storage Partners agree otherwise.

10.3.3 Subject to Section 10.3.4, in the event that the Sites Authority is unable to facilitate a sale of all of the defaulting Participant’s Capacity Interest and Share, interest in Water and right to convey Water to other non-defaulting Storage Partners 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 If any Project Obligation under a Financing Agreement is outstanding (but only to the extent required under such Financing Agreement), any sale of a defaulting Participant’s Capacity Interest and Share to entities other than the non-defaulting Storage Partners shall be subject to the terms of such Financing Agreement, including the right of the applicable Lender to consent to such sale, if any.

10.3.5 Notwithstanding any other provisions of this Contract, and to the extent applicable, the Sites Authority shall not facilitate a sale of 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.

10.3.6 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 Base Facilities Capacity Interest and/or the Downstream Facilities Capacity Share unless the non-defaulting Participants agree to an alternative apportionment of such Defaulted Interests. Notwithstanding the relevant apportionment agreed among the non-defaulting Participants, the foregoing re-allocation will result in a proportional increase in each Participant’s Capacity Interest and Share and the related rights and obligations, but in no event shall such re-allocation result in less than 100% of the total Capacity Interest and Shares and related rights and obligations (including the defaulting Participant’s Defaulted Interest) being allocated among (i) non-defaulting Participants and (ii) such other entities to which the Sites Authority has successfully transferred such Capacity Interest and Share.

10.3.7 Notwithstanding that all or any portion of the defaulting Participant’s Capacity Interest and Share, interest in Water and right to convey Water is so sold, 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 has not been made, except that such liability shall be discharged to the extent that the Sites Authority shall receive payment from the buyer 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 Parties 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 any Party of any breach by any other Party of any agreement, condition, covenant or term under this Contract shall not operate as a waiver as to 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

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 in the following manner:

- (a) If the Sites Authority and the Reservoir Management Board 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 Storage Partners (excluding the Partner Facilities ), at a fair market value as determined by a majority of a panel of 3 licensed appraisers, including (i) any partially constructed or completed physical works or assets that divert Sites Water into or release Sites Water from the Sites Owned Facilities and (ii) any other non-physical rights, interests, or obligations related to the Project. If any Storage Partners accept such offer for any or all of the offered interests, then the Sites Authority and such purchasing Storage Partners shall work in good faith to close upon the sale of such interests within 180 days after the appraiser panel's determination of fair market value.
- (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 Storage Partners 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 Storage Partners. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of Project Assets and any other cash or cash equivalents then held by the Sites Authority shall first be used, based on the Capacity Interest and Share, 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 Storage Partners based on their proportional respective Capacity Interest and Shares. Subject to the Sites Authority Records Management Policy, Storage Partners shall be entitled to copies of any work products developed by the Sites Authority or its consultants on behalf of the Storage Partners, and the Sites Authority shall convey to the Storage Partners, as tenants in common with all other Storage Partners who are not in default of this Contract, a pro rata interest based on the Capacity Interest and Shares 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 Interest and Shares shall be terminated.

11.1.3 Notwithstanding any other provision of this Contract, so long as any Project Obligation under a Financing Agreement is outstanding (but only to the extent required under

such Financing Agreement), the termination of this Contract (including under Section 11.1.1 or Section 11.1.2) shall be subject to the terms of such Financing Agreement, including the right of the applicable Lender to consent to such termination, if any.

## **SECTION 12. DISPUTE RESOLUTION**

### **12.1 Informal Dispute Resolution before Mediation**

12.1.1 The Participants, the Sites Authority and the Acquirer (as applicable to their rights, obligations and liabilities under this Contract) 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, Sites Authority and the Acquirer authorized to administer this Contract, the authorized representative of the applicable Participants, the authorized representative of the Acquirer, as applicable, 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, the Sites Authority's designee and the Acquirer's designee do not resolve the dispute within 30 days after their commencement, the applicable Participants, the Sites Authority and the Acquirer 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, the Sites Authority and the Acquirer 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, the Sites Authority and the Acquirer 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 except in accordance with the Public Records Act. 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 Party's governing body. 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 or the Acquirer 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 nor the Acquirer shall be liable to another Participant, to the Acquirer or to the Sites Authority, and the Sites Authority shall not be liable to the Participants or the Acquirer, 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 and the Acquirer shall be named as additional insureds under all insurance policies maintained pursuant to this section, and such insurance policies shall be primary and noncontributing with any and all insurance carried by the Participants or the Acquirer.

## **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 and/or the Acquirer 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, the other Participants and the Acquirer from time to time.

15.3.2 Any Participant or the Acquirer 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 Lender or 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. Each Participant hereby consents to such pledge and assignment. Such pledge and assignment by the Sites Authority shall be made effective for such time as the Sites Authority shall determine and otherwise as required under the relevant Financing Agreement and provided that the applicable Lender or trustee under the terms set forth in such Financing Agreement shall have the power to enforce this Contract in accordance with Section 15.15.2 the event of a default by the Sites Authority under such 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 between the Parties from any dispute arising in connection with this Contract 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 the Sites Authority and each Participant and each of their permitted successors, assigns, and legal representatives.

15.10 Enforcement

The Parties 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 Contract.

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 held by Participants; 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 and Share or have Water diverted into, stored in, or released from the Project Facilities under its Capacity Interest and Share 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 Management Board to review and discuss the effects of such change of circumstances. Within 30 days after receipt of such notice, the Reservoir Management Board 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 Management Board.

#### 15.13 Authorization and Opinion

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

#### 15.14 Counterparts; Electronic Execution

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. Signatures may be delivered by facsimile transmission or by e-mail in a portable document format (e.g. "pdf," "tif," "jpg" or "DocuSign") or other electronic format and the signatures on such copies shall be deemed to be effective and valid as original signatures.

#### 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. Without limiting the generality of the foregoing, so long as any Project Obligation under a Financing Agreement is outstanding (but only to the extent provided under such Financing Agreement), and only while such Financing Agreement is in effect, upon the occurrence of an event of default under such Financing Agreement, the applicable Lender, under the terms of such Financing Agreement, may exercise the enforcement rights in Section 10 of this Contract, including but not limited to the right to enforce any invoicing made by the Sites Authority to a Participant in accordance with this Contract. Each Participant hereby

consents to such Lender's rights as a third-party beneficiary under this Contract as provided in this Section 15.15.2.

**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**

15.17.1 The Parties shall comply with all Applicable Law and Governmental Approvals.

15.17.2 Prior to the execution and delivery of a Financing Agreement by the Sites Authority, the Sites Authority shall provide the Participants with a substantially final draft of such Financing Agreement (but only to the extent required under such Financing Agreement). If required as a condition to the effectiveness of such Financing Agreement, each Financing Participant participating in the Sites Financing to which such Financing Agreement relates shall provide acknowledgment of (a) the receipt of such Financing Agreement and (b) such other matters as required by such Financing Agreement, including without limitation, the pledge and assignment by the Sites Authority to the applicable Lender, the applicable Lender's right to enforce this Contract as a third-party beneficiary, other various consent rights of the applicable Lender described in this Contract, as applicable, and other rights of the applicable Lender as they may relate to this Contract and the rights and obligations of the Parties, in each case as set forth in such Financing Agreements.

15.17.3 Each Financing Participant participating in the Sites Financing to which any Financing Agreement relates and the Sites Authority shall cooperate with any Lender with third party beneficiary rights with respect to this Contract in enforcing compliance with the terms of this Contract (including the requirements set forth in Section 15.17.2).

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**

**[INSERT PARTICIPANT]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[INSERT PARTICIPANT]**

**STATE OF CALIFORNIA DEPARTMENT  
OF WATER RESOURCES**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[INSERT PARTICIPANT]**

**[INSERT PARTICIPANT]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

## **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.

**AAA:** Means American Arbitration Association.

**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 Section 11575 and/or other Applicable Law on behalf of the SWP Participants and otherwise responsible for performing the functions set out in Section 1.3 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.

**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.

**Associate Member:** Has the meaning given in the Sites Authority Bylaws.

**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 undivided capacity right of each Storage Partner to store, convey and divert Sites Water in each of the Base Facilities granted by the Sites Authority and owned by the Storage Partners in accordance with Section Error! Reference source not found., and in the pro-rata share set out for each Storage Partner in the Project Specific Information and subject to the Sites Water Right, Applicable Law and Governmental Approvals.

**Beneficiary Pays Principles:** Means the principle for allocating all costs associated with delivering certain Project benefits, including public and non-public benefits, to the party receiving such benefits.

**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 the Sites Authority offices are officially closed, and/or (iii) a day which banks are required or authorized by law to be closed in the State of California.

**Capacity Interest and Share:** Means (i) in the case of the Base Facilities, the Base Facilities Capacity Interest; and (ii) in the case of the Downstream Facilities, the Downstream Facilities Capacity Share, or both of them as the context requires.

**Capital Improvement Plan:** Has the meaning given in Section 4.14.1.

**CEQA:** Has the meaning given in Recital C to this Contract.

**Colusa County / Sites Authority MOU:** Means that certain Memorandum of Understanding between the Sites Authority and Colusa County dated on or about November 22, 2021.

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

**Construction:** Means all work to build or construct, rehabilitate, upgrade, make, form, manufacture, furnish, install, supply, deliver, landscape, equip, test and commission any structure, building, or other improvement to real property included in the Project.

**Construction Contract:** Means a contract between the Sites Authority and a contractor to perform Construction work for of all or a portion of the Project.

**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 for Water 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 select Storage Partners listed in the Project Specific Information, as modified from time to time.

**Downstream Facilities Capacity Share:** Means a share expressed in percentage based on the ratio of each Storage Partner's Base Facilities Capacity Interest to the sum of the total Base Facilities Capacity Interest of all Storage Partners with Downstream Facilities Capacity Share, specified in the Project Specific Information, as modified from time to time in accordance with this Agreement.

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

**Effective Date:** Has the meaning given in Section 2.1.2 and specified in the Project Specific Information.

**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 the 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 the 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 the 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; (v) to replenish operating reserves; 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 the 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, court order, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, mitigation agreement, settlement 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.

**JAMS:** Means Judicial Arbitration and Mediation Service, Inc.

**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, Reclamation, 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.

**Other Water:** Means water other than Sites Water that a Storage Partner may request the Sites Authority to store in and/or convey through Project Facilities.

**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 that executed this Contract, 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 Storage Partners in accordance with their Capacity Interest and Share, 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 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.

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

**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 the Sites Authority and the State through the California Water Commission anticipated to be titled Funding Agreement Between the State of California (California Water Commission) and the Sites Joint Powers Authority, setting out [ ] and anticipated to be dated on or about the date of this Contract.

**Public Benefit Agreements:** Means the agreement between the Sites Authority and DWR; anticipated to be titled Proposition 1 Water Storage Investment Program Contract for Administration Of Public Flood Control/Recreation Benefits and the agreement between the Sites Authority and CDFW anticipated to be titled Proposition 1 Water Storage Investment Program Contract for Administration of Public Ecosystem Benefits, or each of them as the context requires.

**Reclamation:** Means the Bureau of Reclamation, an agency of the United States of America.

**Reclamation Partnership Agreement:** Means the agreement between the Sites Authority and Reclamation 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 Management Board:** Means the Reservoir Management Board of the Sites Authority, established by the JPA Agreement, as such Reservoir Management Board 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.

**Secondary Delivery Point(s):** Means a location designated by a Participant for delivery of Water as described in Section 4.6.

**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 Bylaws:** Means the Phase 3, 4, 5 Bylaws of the Sites 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 of the Sites Authority, initially dated [\_\_\_], [ ] as such policy may be modified from time to time.

**Sites Financing:** Means a financing by the 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 \_\_\_, 2025, as such Sites Reservoir Operations Plan may be modified and approved from time to time in accordance with the Sites Authority Policies and this Contract. The initial form of the Sites Reservoir Operations Plan approved by the Reservoir Management Board 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 DWR, the California Water Commission, California Department of Fish and Wildlife, and all other applicable departments and agencies thereof.

**State and Federal Contracts:** Means the Public Benefit Agreements 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 \_\_\_\_, [2025], as such State and Federal Operations Agreement may be modified from time to time.

**State Water Project:** Means the State Water Resources Development System as defined in Section 12931 of the California Water Code.

**State Water Project Facilities:** Means those facilities specified in Sections 12931 and 12938 of the California Water Code.

**Storage Allocation:** Means the maximum actual capacity allocated to a Storage Partner for storing Water in the Project Facilities, measured and determined from time to time in accordance with the Sites Operations Plan.

**Storage Opportunity Request Form:** Has the meaning given in Section 4.4.2.

**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 Reclamation.

**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 Operations Plan.

**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 State Water Project.

**Total Participant Obligation:** Means, with respect to a Participant, the sum of (i) such Participant's cash deposit and (ii) the amount of the Participant Fixed Project Costs to be financed from the proceeds of a proposed Sites Financing, if any, as set forth in such Participant's Notice of Self-Funding Election.

**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 the 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 Sites Water or Other Water conveyed through, or stored by, Storage Partners 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

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



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

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

Section 15.3	City of American Canyon	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	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]

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

	Reclamation District 108	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Land Based Charges]
	Rosedale-Rio Bravo WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Rates and Charges]
	San Bernardino Valley Municipal WD	[INSERT NOTICE DETAILS]	[TO BE INSERTED]	[Statement of Charges]
	San Geronio 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]
<b>SWP Participants</b> Section 1.3	Antelope Valley-East Kern WAC Coachella Valley WD Desert WA San Bernardino Valley Municipal WD San Geronio Pass WA Santa Clarita Valley Water Agency			
<b>Sites Authority Payment Information</b>	<input type="checkbox"/> <b>[Note: To be inserted]</b>			

<b>Participant Capacity Interest and Share</b>  Appendix 1  <b>[Note: Percentages to be completed based on the final financial model and commitments by Participants]</b>	Participant	Base Facilities Capacity Interest	Downstream Facilities Capacity Share
	Antelope Valley-East Kern WA	[INSERT %]	[INSERT %]
	City of American Canyon	[INSERT %]	[INSERT %]
	Coachella Valley WD	[INSERT %]	[INSERT %]
	Colusa County	[INSERT %]	[INSERT %]
	Colusa County WD	[INSERT %]	[INSERT %]
	Cortina WD	[INSERT %]	[INSERT %]
	Davis WD	[INSERT %]	[INSERT %]
	Desert WA	[INSERT %]	[INSERT %]
	Dunnigan WD	[INSERT %]	[INSERT %]
	Glenn-Colusa ID	[INSERT %]	[INSERT %]
	Irvine Ranch WD	[INSERT %]	[INSERT %]
	LaGrande WD	[INSERT %]	[INSERT %]
	Metropolitan Water District of SC	[INSERT %]	[INSERT %]
	Reclamation District 108	[INSERT %]	[INSERT %]
	Rosedale-Rio Bravo WD	[INSERT %]	[INSERT %]
	San Bernardino Valley Municipal WD	[INSERT %]	[INSERT %]
	San Geronio Pass WA	[INSERT %]	[INSERT %]

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

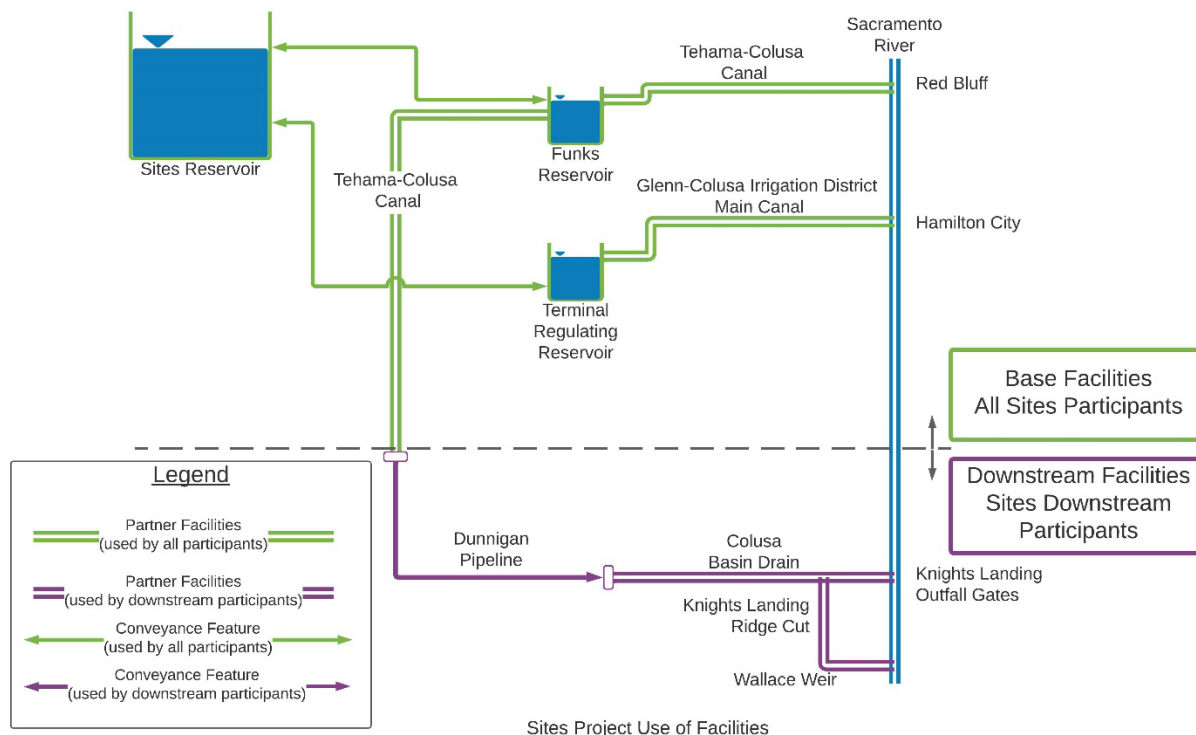
	Santa Clara Valley WD	[INSERT %]	[INSERT %]
	Santa Clarita Valley WA	[INSERT %]	[INSERT %]
	Westside WD	[INSERT %]	[INSERT %]
	Wheeler Ridge – Maricopa WSD	[INSERT %]	[INSERT %]
	Zone 7 WA	[INSERT %]	[INSERT %]
<b>Total</b>		[INSERT %]	[INSERT %]
<b>State and Federal Capacity Interest</b> Appendix 1	<b>Party</b>	<b>Base Facilities Capacity Interest</b>	<b>Downstream Facilities Capacity Interest</b>
	State (CDFW)	[INSERT %]	[INSERT %]
	Reclamation	[INSERT %]	[INSERT %]
<b>Total</b>	Total	[INSERT %]	[INSERT %]
<b>Total with Participant Capacity Interest and State and Federal Capacity Interest</b>		100.00%	100.00%
<b>Financing Participation Percentage</b> Appendix 1 <b>[Note: Financing Participation Percentage to be completed with each Sites Financing.]</b>	<b>Participant</b>	<b>Base Facilities Financing Participation Percentage</b>	<b>Downstream Facilities Financing Participation Percentage</b>
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]
	[INSERT PARTICIPANT]	[INSERT %]	[INSERT %]

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

	[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

##### NOTICE 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 the 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 the Sites Authority by no later than \_\_\_\_\_ (being the 60<sup>th</sup> 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 the 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]



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 90<sup>th</sup> 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 5-1

### 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 [ ], 2025, 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 5-2**

**FORM OF ACQUIRER OPINION LETTER**

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

[DWR to provide form]

## **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 \_\_\_, 2025, 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 \_\_\_\_, 2025, 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: \_\_\_\_, 2025

[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 \_\_\_\_, 2025, 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: \_\_\_\_, 2025

[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 \_\_\_, 2025, 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 (“WRMWSD”) 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.** WRMWSD shall make payments due under the Contract solely (i) from special benefit assessments or charges in lieu of assessments (the “Assessments”) levied by WRMWSD on certain parcels of land within WRMWSD (the “Participating Properties”), the owners of which (the “Participating Landowners”) have executed agreements with WRMWSD 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 WRMWSD 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 WRMWSD or the Wheeler Ridge-Maricopa Groundwater Sustainability Agency (the “GSA”) or any revenues generated by WRMWSD or the GSA from non-Sites related water service or groundwater management activities provided by WRMWSD or the GSA, other than the Pledged Landowner Revenues. The Sites Authority’s recourse for the failure of WRMWSD to pay WRMWSD’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 WRMWSD from WRMWSD’s enforcement of the Assessments and the respective Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts.

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

**C. Service Revenues.** To the fullest extent permitted by law, WRMWSD shall fix, prescribe and collect, during the WRMWSD 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 WRMWSD

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

**D. Enforcement of Wheeler-Ridge Participating Landowner Benefits and Obligations Contracts.** WRMWSD 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, WRMWSD covenants and agrees that WRMWSD shall enforce the WRMWSD’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 WRMWSD 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: \_\_\_\_\_, 2025

WHEELER RIDGE-MARICOPA  
WATER STORAGE DISTRICT

By: \_\_\_\_\_



**APPENDIX 8**

**INITIAL SITES OPERATIONS PLAN**

**[To be attached]**

**DRAFT**

**[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 meets 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 Management Board; 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 Management Board: 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 Management Board 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 Management Board'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 Management Board 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. Associate Member: Either (1) a public agency that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water ( and/or power) users that also meets the joint powers authority membership requirements of California Water Code § 79759 (a) & (b), but elects to accept an advisory role from the Authority, (2) a non-profit mutual water company that complies with the non- profit JPA membership requirements of California Water Code § 79759 (b), but elects to accept an advisory role from the Authority, or (3) a Project



Participant that opts to serve on the Authority Board as a non-voting member, all as further subject to Section 7.4 of the Bylaws.

3.5. Reservoir Management Board: There is hereby formed a Reservoir Management Board composed of representatives of Project Participants. The Reservoir Management Board functions to exercise the “Delegated Authorities”, which are all such powers to design, construct, operate and maintain the Project, and which are not Reserved Powers defined in Section 2.3, and which are more particularly described in Section 10 of the Bylaws. The charter for the Reservoir Management Board, 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 (i) a seventy-five percent (75%) vote of the total number of Directors and (ii) at least seventy-five (75%) of the of the Reservoir Management Board weighted vote, unless otherwise specified in the Bylaws.
- 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 Management Board, 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 Management Board 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 Management Board, 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 Management Board 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 Management Board 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 Management Board.

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 Management Board 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 Management Board 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 (i) an affirmative vote of at least seventy-five percent (75%) of the total number of Directors and (ii) that if the vote against the amendments includes two (2) or more Reservoir Management Board representatives and the disapproving Reservoir Management Board representatives combined represent more than fifteen percent (15%) of the Reservoir Management Board's weighted vote, the amendments shall not be approved. 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 Management Board, 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: \_\_\_\_\_

DRAFT

**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**

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**[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 Management Board, provide for the delegation of authority to the Reservoir Management Board (defined below), and provide procedures for administration of the Authority.
- 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: The Bylaws may only be amended as provided at Section 8.2 of the Agreement and Section 12.3.8. .

## **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 meets 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 Management Board 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 Management Board: A committee of the Authority Board composed of representatives of Project Participants. The Reservoir Management Board functions to exercise the "Delegated Authorities" more specifically identified in Section 10 of these Bylaws, which are all such powers to design, construct, operate and maintain the Project, and which are not Reserved Powers defined in the Agreement. These Bylaws constitute the charter for the Reservoir Management Board, 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 Management Board's direction and the Authority Board's and Reservoir Management Board's approval of the budget, and take such other actions or assume such duties as the Authority Board and Reservoir Management Board may reasonably assign from time to time.

- 4.7. Secretary's Roles and Responsibilities:  
Ensure Authority Board and Reservoir Management Board 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 Management Board will be jointly held at the principal office in Maxwell; however, because the Authority Board and Reservoir Management Board 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 Management Board may be held elsewhere in the State.
  - b. Meetings of the Authority Board or Reservoir Management Board 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 Management Board, at least a quorum of the Authority Board or the Reservoir Management Board 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 Management Board Leadership and Administrative Process**

- 5.1 Establishment of Reservoir Management Board: Section 3.5 of the Agreement establishes a Reservoir Management Board of the Authority, which is composed of representatives of Project Participants. The Reservoir Management Board functions to exercise the "Delegated Authorities", which are all such powers to design, construct, operate and maintain the Project, and which are not Reserved Powers defined in Section 2.3 of the Agreement, and which are further described in Section 10 of these Bylaws.
- 5.2 Conditions of Reservoir Management Board Membership: Membership on the Reservoir Management Board 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 Management Board requires an affirmative vote of at least seventy-five percent (75%) of the weighted vote of the Reservoir Management Board and at least seventy-five percent (75%) of the Authority Board.
- 5.3 Appointment of Reservoir Management Board Representatives: Project Participants (including Authority Members that sign the Benefits & Obligations Contract) in good standing shall appoint their respective representative to the Reservoir Management Board 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 Management Board from the Project Participant's executive leadership) to make decisions on the Project Participant's behalf.
- 5.4 Reservoir Management Board Leadership: The Reservoir Management Board 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 Management Board may determine. The Reservoir Management Board may combine the offices of Secretary and Treasurer. Elections shall occur annually at the regularly scheduled Reservoir Management Board meeting in February, or if for any reason the election does not occur, then at the next meeting of the Reservoir Management Board. 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 Reservoir Management Board 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 Management Board shall serve a term that does not exceed one year in duration. They are not precluded from holding consecutive terms.



- 5.6 Reservoir Management Board Officer Vacancy: Should a Reservoir Management Board officer position become vacant, the Reservoir Management Board shall make an appointment for the remaining duration of the vacated position's term.
- 5.7 Quorum and Voting of the Reservoir Management Board: A weighted majority of the Reservoir Management Board representatives representing Project Participants (including Authority Members that have executed the Benefits & Obligations Contract) shall constitute a quorum for the Reservoir Management Board, 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 these Bylaws. Voting thresholds shall be based on the Project Participants present at a meeting of the Reservoir Management Board and eligible to vote.
- 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 Sales and Use Tax Revenues: 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 Management Board**

- 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 Management Board 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 the Reservoir Management Board or delegated alternate. When travel has been pre- approved by either the Authority or Reservoir Management Board leadership, respectively, the representative is eligible to recover reasonable travel and related expenses.
- 6.3. Closed Sessions: The Authority Board or the Reservoir Management Board, 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 Management Board representative; rather, an alternate may only attend in the place of the alternate's absent Authority Board Director or Reservoir Management Board representative. After a closed session, the Authority Board or Reservoir Management Board will report publicly any action taken in closed session, as well as the vote or abstention of any member or representative present, to the extent required by the Brown Act.

The Authority Board Directors and Reservoir Management Board representatives 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 Management Board.

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.

- 7.4 Associate Member: Either (1) a public agency that has as its sole or a principal power the supplying of water (and/or power) to other entities or to retail water (and/or power) users that also meets the joint powers authority membership requirements of California Water Code § 79759(a) & (b), but elects to accept an advisory role from the Authority, (2) a non-profit mutual water company that complies with the non-profit JPA membership requirements of California Water Code § 79759(b), but elects to accept an advisory role from the Authority, or (3) a Project Participant that opts to serve on the Authority Board.

Financial Contribution: An annual contribution of \$5,000, or as otherwise established from time to time by the Board.

Attributes of an Associate Member:

- Shall be non-voting.
- In a non-voting capacity, may serve on standing committees formed by the Authority Board.
- May serve on ad hoc committees appointed by the Authority Board Chair.
- Upon approval by the Authority Board Chair, may chair a committee.
- May participate in closed session.

## **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 Management Board 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 Management Board, as the case may be, may include suspension of voting rights and/or removal from either the Authority and/or Reservoir Management Board.

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

- 8.2. Representation: An Authority Member's or Project Participant's decision to designate a representative to either the Authority Board or the Reservoir Management Board shall be communicated in writing to the Secretary of the Authority Board and/or Reservoir Management Board, 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 amend 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 Management Board

representatives shall comply with such Code and Political Reform Act and other laws applicable to conflicts of interest.

- 8.4. Local Capacity Interest Representation: The Participants may endeavor to maintain Local Capacity Interest representation, understood as representation by Participants from within the Sacramento Valley hydrologic region, at approximately twenty-five percent (25%) of total Capacity Interest. Participants may count the use of water by Reclamation in the Sacramento Valley hydrologic region pursuant to the Reclamation Partnership Agreement toward the percentage goal provided for in this Section 8.4. Efforts to maintain such a percentage are not intended to, and shall not, limit a Participant's discretion to sell or lease its Capacity Interest.

## **9 Committees**

- 9.1. Common: Each committee of the Authority or the Reservoir Management Board shall have a chartering document approved by the Authority Board or Reservoir Management Board, 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 Management Board shall comprise less than a quorum of the Reservoir Management Board.
- 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 Management Board.

## **10 Authority Board's Reserved Powers and Delegation of Authorities to Reservoir Management Board**

- 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 to design, construct, operate and maintain the Project, and that are not Reserved Powers, are the "Delegated Authorities" of the Reservoir Management Board. 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; provided, however, that notwithstanding

any term or condition of these Bylaws to the contrary, if the vote against a Construction Contract referenced in Section 3.2.1 of the Benefits & Obligations Contract that causes the value of all construction contracts to exceed \$500 million includes two (2) or more Reservoir Management Board representatives and the disapproving Reservoir Management Board representatives combined represent more than fifteen percent (15%) of the Reservoir Management Board's weighted vote, the Construction Contract shall not be approved.

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 Management Board'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 Management Board's selection of a consultant pursuant to Section 10.2.3 above.

10.4. Provided that the Reservoir Management Board's exercise of its Delegated Authorities does not also qualify as a Material Change and Shared Decision defined in Section 12 below, and except as expressly provided in Section 10.2.3 above, such exercise is subject to a weighted majority vote of the Reservoir Management Board.

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

## **11. Authority Board and Reservoir Management Board 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 Management Board and implementing the Project in accordance with policy direction given by the Authority Board and/or Reservoir Management Board. The specific authorities of the Executive Director will be set forth in a delegation of authority matrix that the Authority Board and Reservoir

Management Board 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 Management Board 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 both (i) a seventy-five percent (75%) vote of the Authority Board and (ii) unless otherwise specified below, a seventy-five percent (75%) vote of the Reservoir Management Board, 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 (see Section 8.4 above) as delineated in the Benefits & Obligations Contract.
  - 12.3.7. Recreation management.
  - 12.3.8. Amendments to these Bylaws; provided that, notwithstanding any term or condition of these Bylaws to the contrary, if the vote against any amendment includes two (2) or more Reservoir Management Board representatives and the disapproving Reservoir Management Board representatives combined represent more than fifteen percent (15%) of the Reservoir Management Board's weighted vote, the amendments shall not be approved.
  - 12.3.9. Amount or terms of debt assumed by the Authority, or other financing instruments secured by the Authority; provided that, notwithstanding any term or condition of these Bylaws to the contrary, if the vote against any such amount or terms includes two (2) or more Reservoir Management Board representatives and the disapproving Reservoir Management Board representatives combined represent more than fifteen percent (15%) of the Reservoir Management Board's weighted vote, the amount or terms shall not be approved.
  - 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.

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; provided that, notwithstanding any term or condition of these Bylaws to the contrary, if the vote against any such litigation decision includes two (2) or more Reservoir Management Board representatives and the disapproving Reservoir Management Board representatives combined represent more than fifteen percent (15%) of the Reservoir Management Board's weighted vote, the litigation decision shall not be approved..

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 Management Board.

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 Management Board (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 Management Board 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 Management Board shall each designate representatives to undertake Dispute resolution discussions among Authority Board representatives, Reservoir Management Board 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 Management Board 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 Management Board.

- (c) If the mediation process does not provide a final resolution to the Dispute raised, either the Authority Board or the Reservoir Management Board may submit the matter to binding arbitration under Section 1280 et seq. of the Code of Civil Procedure.

13.3.3. If necessary to avoid damage or to preserve the status quo prior to the completion of the mediation or arbitration process, either the Authority Board on one hand, or a Project Participant or group of Project Participants on the other, may seek a preliminary injunction or other interlocutory judicial relief in a court of competent jurisdiction. Any such action brought by a Project Participant or Participants shall be brought in the name of such Project Participant or Participants, and not in the name of the Reservoir Management Board.

## **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 Management Board 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.



				Percent Present
Project Agreement Member	Voting Memer?	Weight per member (50%)	Weight based on Participation (50%)	Total Voting Weight
American Canyon, City of	Yes	2.27%	0.88%	3.47%
Antelope Valley-East Kern WA	Yes	2.27%	0.11%	2.42%
Coachella Valley WD	Yes	2.27%	2.20%	5.28%
Colusa County	Yes	2.27%	2.20%	5.28%
Colusa County WD	Yes	2.27%	2.04%	5.05%
Cortina WD	Yes	2.27%	0.10%	2.41%
Davis WD	Yes	2.27%	0.44%	2.87%
Desert WA	Yes	2.27%	1.43%	4.22%
Dunnigan WD	Yes	2.27%	0.65%	3.17%
LaGrande WD	Yes	2.27%	0.22%	2.57%
Glenn-Colusa ID	Yes	2.27%	1.10%	3.77%
Irvine Ranch Water District	Yes	2.27%	0.22%	2.57%
Metropolitan WD of S. CA	Yes	2.27%	11.01%	17.29%
Reclamation District 108	Yes	2.27%	0.88%	3.47%
Rosedale-Rio Bravo Water Storage Dist	Yes	2.27%	0.11%	2.42%
San Bernardino Municipal WD	Yes	2.27%	4.71%	8.70%
San Gorgonio Pass WA	Yes	2.27%	3.08%	6.48%
Santa Clara Valley WD	Yes	2.27%	0.11%	2.42%
Santa Clarita Valley (formerly Castaic Lake)	Yes	2.27%	1.10%	3.77%
Westside WD	Yes	2.27%	1.18%	3.89%
Wheeler Ridge-Maricopa WSD	Yes	2.27%	0.67%	3.19%
Zone 7 WA	Yes	2.27%	2.20%	5.28%
Dept of Water Resources	No	0.00%	0.00%	0.00%
US Bureau of Reclamation	No	0.00%	0.00%	0.00%
# Voting M Total		Total		Total
22		50.00%		100.0%

Possible Conditions/Offramps	Current Planned Timing for Completion of Conflict/Offramp			
	Prior to Start of Investor Commitment	Prior to end of escrow period	Prior to Entering 1st Major Construction Contract (B&O Sect 3.2.1)	Not Yet Addressed
<b>Governance Conflict Considerations</b>				
▪ Questions resolved regarding the durability of the delegation of authorities to the Reservoir Committee	X			
<b>Other Agreements Considerations</b>				
▪ The State and/or the Bureau of Reclamation commit to paying their share of the Operations, Maintenance, Energy and Replacement (OME&R) costs of the project		X		
▪ Authority has signed conveyance agreements with TCCA, GCID, and CBD (term sheet)	X			
<b>Permit Considerations</b>				
▪ Receipt of an acceptable BiOp and sufficient time to determine its effect on the Project cost and benefits		X		
▪ Water rights change to a point that the project does not work	X			
<b>Finance Plan Considerations</b>				
▪ Parties have reached a point of readiness to proceed with payment approaches		X		
▪ Final cost estimate for Capital and Operations and Maintenance for the project	X (Level 3 cost estimate)		X (Cost estimate commensurate with level of design at that time)	
▪ A plan has been developed on how the costs of interest during construction will be paid and allocated	X			
<b>Risk Considerations</b>				
▪ A risk and uncertainty analysis has been performed of the 30% design estimates of capital and OME&R costs	X			
▪ Principles for implementation of a Dam Safety Program in progress	X			
<b>Operations Considerations</b>				
▪ Late concessions that result in material limitations to Sites water	X			
▪ Unexpected Sites water wheeling limitations	X			
▪ Regulatory changes that limit ability to move Sites water through Delta	Identify as a project risk			
▪ Final Plan of Implementation of the Bay Delta Water Quality Control Plan	Identify as a project risk			
<b>Decision Considerations</b>				
▪ Vote threshold for RC approving the resolution for construction contract (BO Sec 3.2.1)				X

\* - address in 'risks' section to Program baseline report



**Draft Benefits & Obligations Contract and Governance Development  
Frequently Asked Questions (FAQ) Related to these Subjects  
(Updated April 2025)**

The Benefits and Obligations Contract (B&O Contract) between the Sites Authority and the Participants will describe the contractual rights, 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 evaluation of 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 pro rata share of the Project's storage space (B&O 3.5) and actual diverted water made under the Sites Water Right, along with control over the use of that space and water 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 (Agenda Item 3-3) for the current status of the activities to be completed prior to the execution of the B&O Contracts including the needs of the State and Federal partners.
- 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).
- Having 100% Capacity Interests under contract will require the Sites Authority to execute the State and Federal Contracts (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 enter into construction contracts?**

- The B&O Contract outlines that construction of all or a portion of the Project can proceed upon approval of the RC and AB but must include 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. The RC/AB have the flexibility to issue a single blanket construction contract approval or approvals of each individual construction contract (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 that will require a construction contract approval.

## **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:
  - The Sites Authority upon recommendation of the Reservoir Committee adopts the Resolution to Offer Capacity. This action has the effect of “freezing” all of the contract documents until executed by all parties.
  - Each Participant gets their home board authorization and 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)
  - Each JPA member agency approves the Amended and Restated JPA and the Phase 3,4,5 Bylaws. (9 Agencies)
  - The Bureau of Reclamation executes the Reclamation Partnership Agreement. (1 Agency)
  - 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 Sites Authority adopts the Amended and Restated JPA and the Phase 3,4,5 Bylaws, executes the B&O Contracts with each Participant, executes the Proposition 1 Water Storage Investment Program Contracts and 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 was considered as part of Agenda Item 3-4at the March 21, 2025 meeting.
- 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 Section 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 on 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.

### **Why is DWR being identified as the Acquirer?**

- Certain Participants are anticipated to secure their Sites Water through their Statement of Charges under the State Water Project. By statute, DWR has the authority to acquire water supplies for state water contractors. Serving in this capacity requires that DWR be signatory to the B&O along with these Participants. In addition, provisions are being proposed that serve to confirm the remaining State Water Contractors are not put into any greater financial or legal risk associated with DWR being in this role for certain Sites Participants.

### **What is the intention behind maximizing the Sites water right and why is there a Sites Water Right Development Period?**

- The appropriative water right process in California includes 2 major steps – the permitting process and the licensing process. Water right permits specify a development schedule or development period to complete construction, implement the terms and conditions of the permit, and beneficially use water under a permit. When the development period is nearing completion, a water right moves to licensing. In licensing, the State Water Board confirms the terms and conditions and issues a license to the appropriator. The license will limit future diversions to the largest volume of water diverted in one single diversion season over the development period. This license is the final confirmation of the water right and remains effective as long as its conditions are fulfilled and beneficial use continues.
- Thus, maximizing the largest volume of water diverted in one single year under the Sites Water Right Permit development period will directly affect the ability of the Authority to divert water under its water right into the future. As all Storage Partners benefit from diversions of water under the Sites Water Right, it is in all Storage Partners' interest to operate Sites Reservoir in the water right development period to attempt to achieve the highest diversion possible in one single year.
- Not all years are years where the Authority may achieve a high diversion rate. For example, if Sites Reservoir is close to full capacity in the fall, it's unlikely that

substantial diversions would occur that winter as the reservoir is likely to fill. However, when reservoir elevations are low headed into the fall/winter months, substantial diversions may be possible with favorable hydrologic conditions.

- Notwithstanding these interests, each Participant retains its ability to call or not call on diversions into its storage space at any time when in good standing.

#### **What is the order for priorities for the diversion and release of Sites water?**

- In accordance with all its obligations, the Authority plans to maximize the diversion of Sites Water into storage consistent with physical constraints and hydrologic conditions. As diversions of Sites Water benefit all Storage Partners, diversions will take priority over releases and over diversions of non-Sites Water (termed Other Water in the B&O). Under the Sites Water Right, diversions of Sites Water must be placed in storage in Sites Reservoir before this water can be used by Storage Partners.
- Releases may be constrained by downstream capacity. The Authority will attempt to coordinate with Storage Partners to meet their requested release schedules or request changes and adjustments in the timing of requested releases to avoid capacity constraints. If conflicts cannot be resolved, then releases directly from the reservoir will be made in proportion to each entity's Base Capacity Interest. In downstream facilities, such as the Dunnigan Pipeline, those Storage Partners with a Downstream Capacity Interest will have first priority to available conveyance capacity. Storage Partners without Downstream Capacity Interest will have second priority and will need to use unused capacity or adjust their schedule to avoid constraints. Although capacity constraints are possible, the Authority is hopeful that the Storage Partners will be willing to be flexible in their release timing, to the extent possible, to reduce and avoid conflicts and allow all Storage Partners to move their Sites Water in a season. Releases to meet regulatory requirements, permit conditions, and for delivery to Storage Partners takes priority over management of releases for power generation and recreation.



## **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 Financial 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

A

Participants and Authority monitor financial performance and ability to pay upcoming debt service. If in financial distress, Participant can: (1) **sell water**, (2) **lease storage**, (3) **sell storage**

**If Participant misses payment, Project Sufficiency Waterfall goes into effect**

## Project Sufficiency Waterfall

B

Participants notified of payment default and allowed to volunteer to pay debt and sufficiency obligation in exchange for entitlement \*

**No volunteers**

C

Authority seeks outside entities interested in assuming debt and obligations in exchange for entitlement (subject to approval by Authority, Reservoir Committee, lending entities) \*

**No outside entities interested**

D

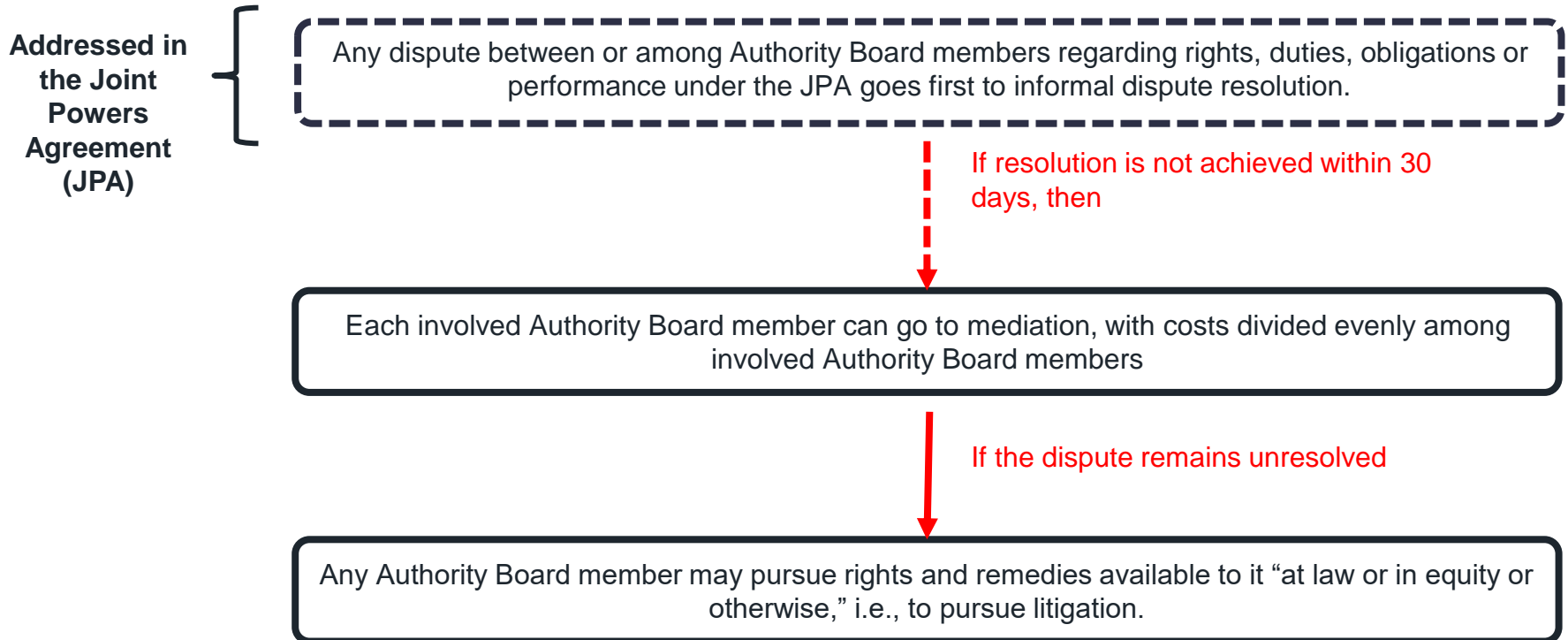
Participants comply with upon sufficiency pledge in one of two ways and will receive proportionate share of entitlements in return: (1) if Participant contributed up front to Liquidity Reserve, Liquidity Reserve is drawn upon and these Participants subsequently replenish reserve or (2) if Participant did not originally contribute to Liquidity Reserve, they committed to pay their share of debt service shortfall at this time (i.e. cash call for these Participants)

\* Changes will require lender/rating agency notification and approval

Authority in  
control of  
asset/project  
rights

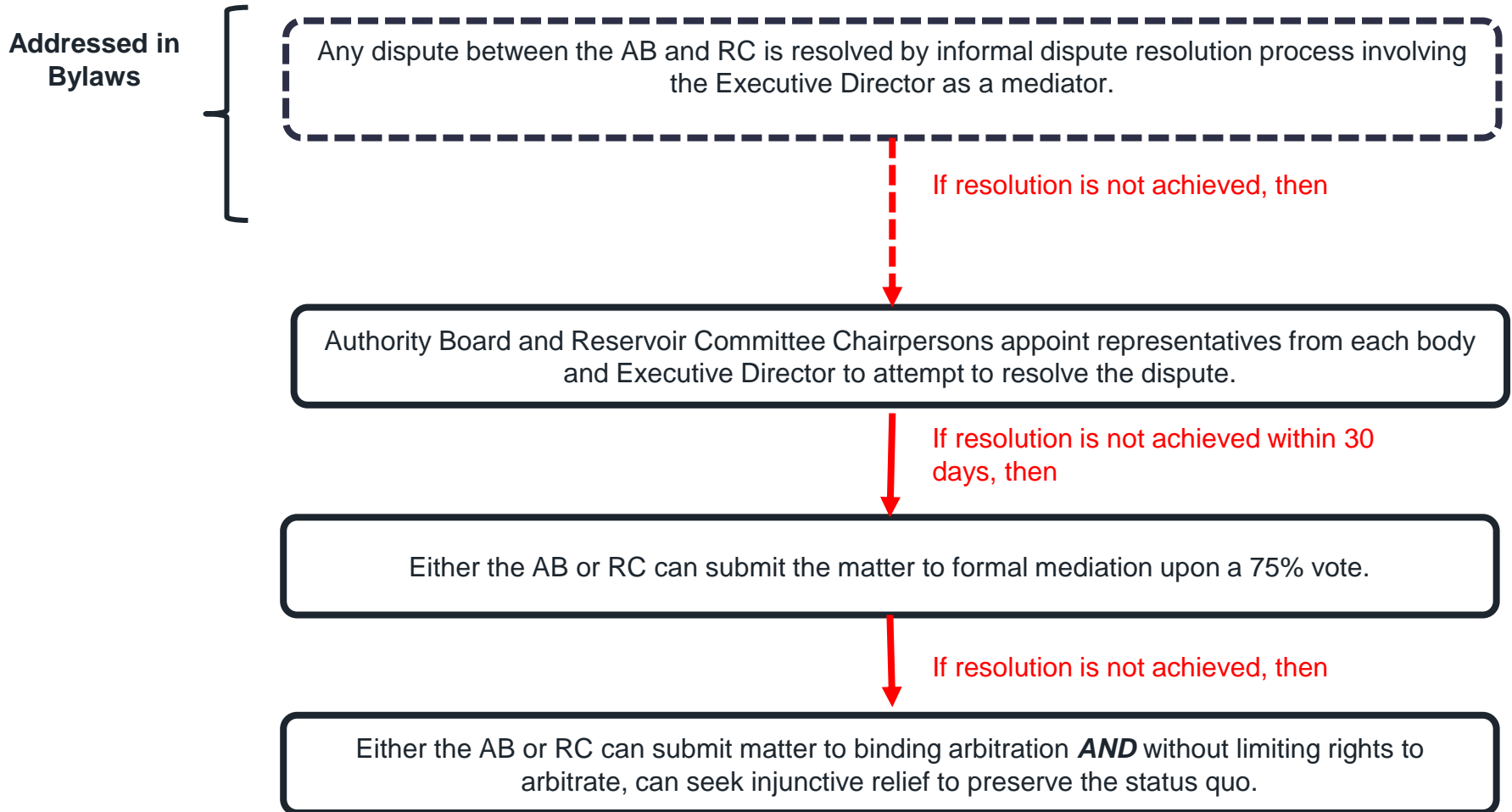


### ■ Contract Dispute between Authority Board Members





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





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

Addressed in  
Benefits and  
Obligations  
(B&O) Contract

Within 60 days following written notice of the existence of a dispute under the contract, involved are to undertake good faith dispute resolution efforts

If resolution is not achieved, then

Representatives of involved Participants and a representative of the AB (either the ED or a Board Member) to meet and confer

If and only if Parties attempt informal dispute resolution and resolution is not achieved within 30 days, then

Parties have all remedies available to them under the B&O Contract or at law or in equity.

**Meaning** - the Parties Shall submit to non-binding mediation in the manner provided for in the B&O Contract

OR

File legal action (implicit in the B&O Contract)