State of California
California Natural Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT BETWEEN THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA AND THE SITES PROJECT AUTHORITY FOR CONVEYANCE OF SITES WATER FOR SOUTH OF DELTA CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFUGES

SWP #XXXXX

FINAL DRAFT

AGREEMENT FOR CONVEYANCE OF SITES WATER FOR SOUTH OF DELTA CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFUGES

This Agreement for Conveyance of Sites Water for South of Delta Central Valley Project Improvement Act Refuges (Agreement) is entered into as of _____, 20__, between the Department of Water Resources of the State of California ("DWR") and the Sites Project Authority ("Sites Authority"), pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act and other applicable laws of the State of California. DWR and the Sites Authority may be referred to individually as "Party" or collectively as "Parties". Capitalized terms shall have the meaning set forth in Section 1 of this Agreement.

RECITALS

A. 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 on August 26, 2010, when seven regional entities executed the Joint Exercise of Powers Agreement. Sites Authority was established for the purpose of designing, constructing, owning, operating, and maintaining the Sites Reservoir Project, which has long been evaluated as a location for additional off-stream storage to provide direct and real benefits to instream flows, the Delta ecosystem, and water supply throughout the State.

B. The Sites Reservoir Project is a unique, multi-benefit water storage project that will capture and store water from major storms, so water is available to California's communities, farms, and the environment during dry periods.

C. DWR is a public agency within the California Natural Resources Agency. DWR operates and maintains the State Water Project (SWP) pursuant to the laws of the State of California, involving the development and conveyance of water supplies to water supply agencies throughout the State of California.

D. DWR, the United States Bureau of Reclamation (Reclamation), and Sites Authority have negotiated and intend to enter into an "Agreement between the Department of Water Resources of the State of California, the United States Bureau of Reclamation, and the Sites Project Authority to Coordinate in the Operations of the Sites Reservoir Project" (Sites Operations Agreement) to provide a framework for how the Sites Reservoir Project, SWP, and Central Valley Project (CVP) would operate in a shared watershed. Attachment 2 to the Sites Operations Agreement describes operations involving the releases of previously stored Sites water, including conveyance of this water through SWP and CVP facilities.

FINAL DRAFT

E. Sites Authority is working to provide Sites water for Incremental Level 4 water needs for the CVP Improvement Act (CVPIA) refuges (“Refuge Water”) both north and south of the Sacramento-San Joaquin Delta (Delta), pursuant to a Contract for Administration of Public Benefits (CAPB) between the Sites Authority and the California Department of Fish and Wildlife, for water supply benefits funded by the California Water Commission under the Water Storage Investment Program.

F. Sites Authority has requested DWR’s services, under this Agreement, to convey released Refuge Water through SWP facilities from the Delta Export Facilities to the Delta-Mendota Canal – California Aqueduct Intertie (DCI) or O’Neill Forebay, for subsequent delivery by Reclamation to south of Delta CVPIA refuges.

G. DWR is willing to convey Refuge Water through SWP facilities subject to the needs for SWP project operations, services to SWP contractors, the availability of transportation capacity, regulatory compliance and payment of costs, as herein provided.

H. Sites Authority prepared a Final Environmental Impact Report/Environmental Impact Statement (FEIR/FEIS) for the Sites Reservoir Project under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act and filed a Notice of Determination (NOD) with the State Clearinghouse in November 2023 (SCH #2001112009). DWR, as a responsible agency under CEQA, has considered the environmental effects of the project as shown in the FEIR/FEIS, made the required CEQA findings, and will file a NOD with the State Clearinghouse upon execution of this Agreement.

FINAL DRAFT

AGREEMENT

Now, therefore, in accordance with these recitals and in consideration of the terms and conditions herein, the Parties agree to the following:

1. DEFINITIONS

When used in this Agreement, the following terms have the meanings set forth below.

(a) "CAPB" shall have the meaning set forth in Recital E of this Agreement.

(b) "Carriage Water" means the additional water needed for Delta outflow to compensate for the additional export of Sites Water to assure compliance with the water quality requirements of the SWP and CVP, as determined by DWR and Reclamation.

(c) "Delta" means the Sacramento-San Joaquin Delta as described in California Water Code Section 12220.

(d) "Delta Export Facilities" means the Harvey O. Banks Delta Pumping Plant, including Clifton Court Forebay, owned and operated by DWR.

(e) "Maximum Released Amount" means the total maximum amount of Refuge Water to be released by Sites Authority for conveyance under this Agreement, up to 1,000 cubic feet per second (cfs) or 100,000 acre-feet annually, before any losses.

(f) "Refuge Water" shall have the meaning set forth in Recital E of this Agreement.

(g) "Sites Operations Agreement" shall have the meaning set forth in Recital D of this Agreement.

2. PURPOSE

The purpose of this Agreement is to set forth provisions governing DWR's export and conveyance of Refuge Water through Delta Export Facilities to DCI or O'Neill Forebay.

3. TERM

(a) Subject to Section 3(b), this Agreement shall be effective upon execution by the Parties and shall remain in effect for as long as the CAPB remains

FINAL DRAFT

in effect, or until final payment to DWR of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless, and indemnification obligations in this Agreement shall remain in effect until the expiration of the applicable statute of limitations, or until any claim or litigation concerning this Agreement asserted against Sites Authority or DWR within the applicable statute of limitations is finally resolved, whichever occurs later.

(b) The effectiveness of this Agreement shall be contingent on both (i) the Sites Operations Agreement and (ii) CAPB being fully executed and in effect. If the Operations Agreement or CAPB terminates without a superseding agreement, this Agreement shall terminate at the same time; provided that the provisions in Section 9 (Charges and Payments), 10 (Liability) and 18 (Dispute Resolution) shall survive the termination of the Agreement.

4. COMPLIANCE WITH APPLICABLE LEGAL REQUIREMENTS AND OBTAINING APPROVALS

(a) Sites Authority shall comply with all applicable laws and regulations related to releases of Refuge Water for the purpose of conveying such Refuge Water under this Agreement, including but not limited to CEQA, the California Endangered Species Act and the Federal Endangered Species Act. Sites Authority shall also secure any required consents, permits, reports and orders, and be responsible for obtaining any necessary approvals from any relevant government entities for releases of Refuge Water. Sites Authority shall provide DWR with any copies prior to releasing Refuge Water for conveyance under this Agreement. Any submissions Sites Authority makes to any government entity related to conveyance of water under this Agreement shall be provided to DWR.

(b) Releases of Refuge Water for conveyance under this Agreement shall be subject to the terms and conditions of the Sites Operations Agreement applicable to the release of previously stored water from the Sites Reservoir Project into the Sacramento River, including but not limited to the timing of such releases, flow measurements, and losses.

5. CONVEYANCE OF REFUGE WATER

(a) DWR agrees to convey Refuge Water, up to the Maximum Released Amount, less Carriage Water and other losses as determined by DWR, from the Delta Export Facilities to DCI or O'Neill Forebay, in accordance with a schedule approved by DWR.

FINAL DRAFT

(b) Conveyance of Refuge Water through SWP facilities pursuant to this Agreement is subject to available export and conveyance capacity in SWP facilities in excess of capacity determined by DWR to be needed for SWP operations or services to any SWP contractor. DWR is solely responsible for determining whether conveyance capacity exists for the conveyance of Refuge Water, which includes a determination of capacity available after delivery of SWP water and water for regulatory, water rights and contractual obligations. Nothing herein shall be interpreted as a guarantee or assurance that such excess capacity will be available at any time.

(c) Conveyance of Refuge Water may be curtailed prior to or subsequent to approval of Sites Authority's schedule under Section 8 of this Agreement, in the event DWR determines the delivery would interfere with the delivery of water to SWP contractors or other SWP operations, including delivery of water to SWP storage or reregulation of stored water for delivery to SWP contractors, or regulatory compliance.

(d) DWR may temporarily discontinue or reduce the quantity of Refuge Water to be delivered under this Agreement for the purpose of investigation, inspection, maintenance, repair or replacement of any SWP facility or any part thereof. To the extent reasonably practicable, DWR shall give Sites Authority advance notice of such temporary discontinuance or reduction, except in the case of emergency, in which case no notice need be given. DWR shall use its best efforts to avoid such discontinuance or reduction in such service, and upon resumption of service after such reduction or discontinuance, and if requested by Sites Authority, DWR will, if capacity is available, deliver the quantity of Refuge Water which otherwise would have been delivered in the absence of such discontinuance or reduction, but only to the extent such delivery can be made without adversely impacting SWP operations or deliveries to SWP contractors.

(e) The total amount of Refuge Water made available to DWR by Sites Authority for conveyance under this Agreement shall include water to compensate DWR for (i) Carriage Water, and (ii) other water conveyance losses incurred in the conveyance of Refuge Water, as determined by DWR. The amount of conveyance losses from the Delta Export Facilities to O'Neill Forebay shall be two (2) percent. The amount of conveyance losses from the Delta Export Facilities to DCI shall be zero (0) percent. After coordination with Sites Authority, DWR may adjust the percentage of losses if supported by DWR's technical analysis. DWR's determination will remain consistent with the then current losses policy applied to other DWR conveyance agreements for non-SWP water. The adjusted percentage of losses shall become effective upon DWR's notice to Sites Authority.

FINAL DRAFT

(f) DWR shall not be responsible for the use, effects, or disposal of Refuge Water before such water reaches Delta Export Facilities or after it has been conveyed to DCI or O'Neill Forebay. Sites Authority shall be responsible for coordination with and making the necessary arrangements with Reclamation for the conveyance of Refuge Water from DCI or O'Neill Forebay to the CVPIA refuges, and DWR shall not be responsible for any of Reclamation's actions or omissions related to such conveyance. Should Reclamation fail to divert Refuge Water after it has been conveyed by DWR to DCI or O'Neill Forebay, DWR will meet with Sites Authority to determine if the Refuge Water can be delivered to meet other Sites Authority obligations using SWP facilities and/or could be delivered to another point of delivery. However, DWR has no obligation to facilitate such deliveries, and a separate agreement with DWR may be required for such deliveries. The Sites Authority shall be responsible for any approvals and DWR costs associated with such deliveries.

6. VERIFICATION AND RECORDS

(a) DWR will verify the amount of Refuge Water made available by Sites Authority at the Delta Export Facilities and the total amount, minus losses, conveyed to DCI or O'Neill Forebay.

(b) DWR will maintain accurate and complete records of deliveries of Refuge Water under this Agreement.

7. AVOIDING IMPACTS

(a) This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to the SWP, including but not limited to any SWP water allocations, SWP water deliveries or other SWP operations or services to SWP contractors, or DWR's compliance with regulatory requirements. The Parties agree that DWR is solely responsible for determining whether conveyance of Refuge Water causes or may cause any such adverse impact.

(b) Sites Authority shall be responsible for ensuring that releases of Refuge Water for the purposes of this Agreement do not injure any legal user of water, and do not result in adverse impacts to fish, wildlife, or other instream beneficial use, or unreasonable impacts affecting the overall economy or the environment of the county from which the water is being released. Sites Authority shall immediately notify DWR if it becomes aware of any such injury or impacts.

FINAL DRAFT

(c) If DWR determines that an injury or impact under this Section 7 occurs or may reasonably occur, DWR shall have the right to discontinue conveyance of Refuge Water under this Agreement until such injury or impact is avoided, remedied or mitigated.

8. SCHEDULING

(a) The conveyance of Refuge Water under this Agreement shall be in accordance with schedules submitted by Sites Authority and reviewed and approved by DWR.

(b) The amount, timing, and rate of conveyance of Refuge Water must be consistent with DWR's determination of available conveyance capacity including, but not limited to, any contractual, regulatory or water quality restrictions limiting SWP pumping and/or conveyance.

(c) Sites Authority, in coordination with Reclamation, shall submit monthly water delivery schedules and revised monthly schedules, if any, for approval to the Division of Operations and Maintenance, Office of the Division Manager, Water Deliveries Reporting Unit, indicating timing and point of delivery requested under this Agreement with reference to SWP #XXXXX. Monthly and revised schedules shall be sent by electronic mail to SWP-SWDS@water.ca.gov.

(d) Sites Authority, in coordination with Reclamation, shall submit weekly water delivery schedules that indicate timing and point of delivery requested with reference to SWP #XXXXX, by electronic mail by 10:00 a.m., Wednesday, for Monday through Sunday of the following week, to the following:

(1) Water Delivery Scheduling
Water_deliv_sched@water.ca.gov

(2) Power Management and Optimization Section
POCOptimization@water.ca.gov

(3) Day-Ahead Scheduling Unit
Presched@water.ca.gov

(4) Water Operations Scheduling Section
WOSS@water.ca.gov

(5) Delta Field Division Water Operations
DFDWaterOperations@water.ca.gov

FINAL DRAFT

(e) DWR may revise the timing requirements and contact information for scheduling of water deliveries under this Agreement by providing a written notice to Sites Authority, without the need to amend this Agreement.

9. CHARGES AND PAYMENTS

(a) Sites Authority shall be responsible for and shall pay all costs incurred by DWR, which are properly attributable to the implementation of this Agreement, including:

(1) Sites Authority shall pay DWR an annual administrative flat fee to cover DWR costs related to the administration of this Agreement, including but not limited to the scheduling, measuring and reporting of Refuge Water conveyed under this Agreement. By March 1 of the year preceding the year of anticipated commencement of the Sites Reservoir Project operations and then by March 1 of every year thereafter, DWR will notify Sites Authority of the applicable administrative fee in effect for the following year, including any applicable annual increases for inflation. At Sites Authority's request, DWR shall provide Sites Authority with documentation substantiating the amount of the administrative fee.

(2) Sites Authority shall be responsible for all power costs incurred by DWR for conveyance of Refuge Water under this Agreement, as described below:

(A) Sites Authority shall pay all incremental costs incurred by DWR associated with scheduling power to pump Refuge Water at SWP facilities. Such costs include, but are not limited to, load based California Independent System Operator (CAISO) costs, CAISO marginal cost of congestion, CAISO energy loss charges, Transmission Access Charges and/or Wheeling Access Charges, Grid Management Charges, Ancillary Service costs, Scheduling fees, costs related to Greenhouse Gas compliance, and Resource Adequacy (RA) charges. RA charges will be based on the total amount of Refuge Water conveyed in that month, due to advance scheduling practices through CAISO.

(B) Sites Authority shall pay the CAISO incurred costs associated with the pumping of Refuge Water at SWP facilities under this Agreement, pursuant to the terms established by Contract 12-SNR-01605 entitled "California

FINAL DRAFT

Independent System Operator Scheduling Services for Joint-Use Facilities of the San Luis Unit and Certain CDWR Pumping Facilities" between DWR and the Western Area Power Administration, as may be amended.

(3) Sites Authority shall pay use-of-facilities charges for conveyance of Refuge Water from the Delta Export Facilities to DCI or O'Neill Forebay. The calculation of this charge is based on the total monthly exported amount of Refuge Water at Delta Export Facilities pursuant to this Agreement. DWR will notify Sites Authority, in writing, prior to December 31 of each calendar year of the use-of-facilities charges per acre-foot for the following calendar year, starting with the year when the Sites Reservoir Project becomes operational. That charge will be determined by DWR in a manner consistent with the use-of-facilities charges applied to other non-SWP contractors based on information from the annual Appendix B of DWR Bulletin 132.

(4) Sites Authority shall pay DWR for any other demonstrable costs that the SWP contractors or DWR otherwise bear as a result of DWR's activities under this Agreement; provided that DWR substantiates in writing to Sites Authority that such costs resulted solely from DWR's activities under this Agreement.

(b) DWR will invoice the Sites Authority for the costs incurred by DWR in any given year and provide relevant documentation, if needed, by March 31 of the following year. Sites Authority agrees to pay DWR within thirty (30) days after receiving an invoice. If payments are delinquent by more than thirty (30) days, DWR will charge interest for unpaid amounts at the rate of one (1) percent per month from the invoice due date to the date of payment. If Sites Authority disputes an invoice, Sites Authority shall still pay the full invoice amount when due and shall submit a notice to DWR identifying the dispute within thirty (30) days of receipt of the invoice. Within twenty-one (21) days after DWR receives the notice, the Parties will meet in an attempt to resolve the dispute. If the Parties agree that an overpayment occurred, DWR will apply the resulting credit on the next invoice. If the Parties cannot reach agreement, the Parties will follow the dispute resolution process in Section 18.

(c) If Reclamation or a CVPIA refuge is unable, fails, or refuses to accept delivery of Refuge Water conveyed by DWR in accordance with this Agreement, such inability, failure, or refusal shall not relieve Sites Authority of its obligations to pay DWR all associated costs under Section 9(a).

FINAL DRAFT

(d) DWR may terminate this Agreement if Sites Authority fails to fully or timely pay DWR charges for providing services to Sites Authority pursuant to this Agreement and fails to cure such failure to pay within sixty (60) days of receiving DWR's written notice.

10. LIABILITY

(a) Sites Authority agrees to defend and hold DWR, its officers, employees, and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, its officers, employees, and agents from all lawsuits, costs, damages, judgments, attorneys fees, and liabilities that DWR, its officers, employees, and agents incur as result of DWR approving this Agreement or providing services under this Agreement, except to the extent resulting from the negligence or willful misconduct of DWR, its officers, employees, and agents.

(b) If uncontrollable forces preclude DWR from conveying Refuge Water, either partially or completely, then DWR is relieved from the obligation to convey Refuge Water to the extent that DWR is reasonably unable to complete the obligation due to the uncontrollable force. Uncontrollable forces shall include, but are not limited to: earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.

(c) Sites Authority shall not be entitled to recover any costs paid under this Agreement, if uncontrollable forces preclude DWR from conveying Refuge Water.

11. AMENDMENTS

This Agreement can be amended by mutual written agreement of the Parties. The Parties recognize that the Sites Reservoir Project will not be fully operational until after 2030, and the Parties agree to review and, if needed, modify this Agreement when the Sites Reservoir Project is close to commencing operations.

12. WATER RIGHTS NOT AFFECTED

Consistent with the provisions of California Water Code Sections 101, 109, 475, 1244, and 11961, the Parties agree that nothing in this Agreement shall be evidence of the availability of surplus water beyond the term of the Agreement, shall be evidence of lack of beneficial use of the water involved in the conveyance, or shall in any way prejudice any of Sites Authority's rights to water.

FINAL DRAFT

13. OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for a Party's action based upon opinion, judgment, approval, review, or determination, the Parties do not intend, and shall never construe such terms as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

14. NO PRECEDENT

The Parties' approval of this Agreement is unique and shall not be considered a precedent for future agreements or DWR activities.

15. NO THIRD-PARTY BENEFICIARY

The Parties to this Agreement do not intend to create any third-party beneficiaries to this Agreement and expressly deny the creation of any third-party beneficiary rights hereunder toward any person or entity.

16. CONSTRUCTION AND INTERPRETATION

The Parties agree and acknowledge that they have arrived at this Agreement through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

17. WAIVER

The waiver or failure to declare a breach as a result of the violation of any term of this Agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel, forgiveness or waiver by any Party to that term or condition.

18. DISPUTE RESOLUTION

In the event of dispute regarding interpretation or implementation of this Agreement, duly authorized representatives of DWR and Sites Authority shall endeavor to resolve the dispute by meeting within thirty (30) days after the request of any Party to this Agreement. If the dispute remains unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. The Parties shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to all Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may at

FINAL DRAFT

its option pursue any available legal remedy, including but not limited to, injunctive and other equitable relief.

19. NOTICES

Unless otherwise provided in this Agreement, all communications or notices in connection with this Agreement shall be deemed to have been duly given upon the date of service if served personally on the Party to whom notice is to be given, or sent by electronic mail to the following addresses and the Party to whom notice is to be given confirms receipt. A Party may update its contact information by providing a written notice to the other Party, without the need to amend this Agreement.

(a) DWR – Contract Administration
Assistant Division Manager of Water Management
Post Office Box 942836
Sacramento, California 94236-0001
ADMWM_Managers@water.ca.gov

(b) DWR – Operations Contact
Water Operations Scheduling Section
3310 El Camino Avenue, Suite 300
Sacramento, California 95821-9000
WOSS@water.ca.gov

(c) Sites Authority – Operations Contact
Post Office Box 517
Maxwell, California 95955
Admin@sitesproject.org

20. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, any applicable federal law 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 Agreement shall be in the County of Sacramento.

21. EXECUTION

(a) The Parties may execute this Agreement in counterpart. The Parties agree to accept facsimile, Docusign digital signature, or PDF (Portable Document Format) signatures as original signatures.

FINAL DRAFT

(b) The signatories represent that they have appropriate authorization to enter into this Agreement on behalf of the Party for whom they sign.

(c) If required by Sites Authority's internal governing rules, Sites Authority shall deliver to DWR a copy of the Board of Directors resolution and/or other documentation authorizing Sites Authority to enter into this Agreement.

[Signatures on the following page.]

FINAL DRAFT

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form
and Sufficiency

Ann K. B. Carroll
General Counsel
Department of Water Resources

Date

State of California
Department of Water Resources

Tom Gibson
Director

Date

Sites Project Authority

Jerry Brown
Executive Director

Date

FINAL DRAFT