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 EXCHANGES OF WATER BETWEEN THE SITES RESERVOIR PROJECT AND STATE WATER PROJECT

SWP #XXXXX

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AGREEMENT FOR EXCHANGES OF WATER BETWEEN THE SITES RESERVOIR PROJECT AND STATE WATER PROJECT

This Agreement for Exchanges of Water Between the Sites Reservoir Project and State Water Project (Agreement), is entered into as of _____, 202__, 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. DWR owns, 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.

B. The Sites Authority is a California Joint Powers Authority operating under and by virtue of Section 6500 et seq., of the California Government Code and formed in accordance with the Sites Project Authority Joint Exercise of Powers Agreement, as such agreement may be modified from time to time. The Sites Authority was formed on August 26, 2010, when seven regional entities executed the Joint Exercise of Powers Agreement.

C. The 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.

D. DWR operates the SWP and the United States Bureau of Reclamation (“Reclamation”) operates the Central Valley Project (“CVP”) consistent with the November 23, 1986 Agreement between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project (“COA”), as amended, which defines how the SWP and CVP share water quality and environmental flow obligations within the Delta imposed by regulatory agencies, including the State Water Resources Control Board (“SWRCB”).

E. The Sites Authority has been issued the Sites Water Right for the Sites Reservoir Project through the partial assignment of State Filed Application No. A025517, which

has a priority date of September 30, 1977. The final SWRCB order is contained in D-XXXX. [*to be updated based on SWRCB's final order*]

F. The Sites Authority, DWR, and Reclamation have negotiated and intend to enter into the Operations Agreement to establish their respective rights and obligations related to the Sites Reservoir Project's operations in a shared watershed and to prevent or compensate for any adverse effects resulting from the operation of the Sites Reservoir Project to the SWP and CVP.

G. The Sites Authority has requested that DWR allow Exchanges (as defined in Section 1) of water between the Sites Reservoir Project and SWP to increase flexibility of the Sites Reservoir Project, while having a neutral or net beneficial impact on the SWP operations and deliveries to the SWP contractors. In particular, Sites Releases designated for Exchange can allow for less releases of SWP water from Lake Oroville to meet DWR's regulatory requirements or contractual obligations and thus resulting in temporary increased storage in Lake Oroville. In exchange for such increase in SWP storage due to Sites Releases designated for Exchange, DWR would subsequently provide a like quantity of SWP water to the Sites Authority for delivery to certain Participants and Proposition 1 Ecosystem Public Benefit purposes, to the extent consistent with the Sites Authority's and DWR's respective water rights.

H. DWR and the Sites Authority desire to enter into this Agreement to establish how such Exchanges shall be coordinated, implemented, and accounted for.

I. 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.

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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

The following terms are defined below under this Agreement:

(a) “Allowable Costs” means those costs eligible for reimbursement or credit under this Agreement, as defined and governed by Exhibit 1 - Allowable Costs.

(b) "Benefits and Obligations Contract" means the Sites Reservoir Benefits & Obligations Contract between the Sites Authority, Participants and DWR as the Acquirer, as defined therein, setting forth the rights and obligations of the parties with respect to the Sites Reservoir Project.

(c) “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 CVP and SWP, as determined by Reclamation and DWR.

(d) "COA" means the Agreement between the United States of America and the State of California for Coordinated Operations of the Central Valley Project and the State Water Project, dated November 24, 1986, amended December 12, 2018, and as it may be further amended.

(e) “CVP” means the federal Central Valley Project owned and operated by Reclamation.

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

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

(h) “DWR” has the meaning given in the preamble above.

(i) “Exchange” means a voluntary action between the Sites Authority and DWR to exchange a quantity of Sites Water for a like quantity of SWP water, to the extent consistent with the Sites Authority’s and DWR’s respective water rights, to increase flexibility of the Sites Reservoir, while having a neutral or net beneficial impact on SWP operations and

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deliveries to the SWP contractors and not otherwise affecting the ability of the SWP to meet applicable laws, regulations, biological opinions and incidental take permits, court orders, contractual obligations, or any other applicable legal obligations in place at the time of the Exchange.

(j) “North of the Delta Refuges” means wetland habitat areas located north of the Delta that receive water from the Feather River system and that the Sites Authority is providing or intends to provide water to under the Sites Authority's Contract for Administration of Public Benefits with the California Department of Fish and Wildlife.

(k) “Operations Agreement” means the Agreement to Coordinate in the Operations of the Sites Reservoir Project between DWR, Reclamation, and the Sites Authority.

(l) "Participants" means the parties to the Benefits and Obligations Contract, other than the Sites Authority and DWR, that pay to participate and receive benefits in the Sites Reservoir Project including certain Sites Authority members and other municipal entities and special districts.

(m) "Party(ies)" has the meaning given in the preamble above.

(n) “Proposition 1 Ecosystem Public Benefit” means the Sites Water releases designated to serve ecosystem public benefit purposes that are defined in the Contract for Administration of Public Benefits which is to be executed between the Sites Authority and the California Department of Fish and Wildlife.

(o) “Reclamation” means the United States Department of the Interior, Bureau of Reclamation.

(p) "Sites Authority" has the meaning given in Recital B above.

(q) "Sites Reservoir Project" means the entire existing and new physical infrastructure and capital improvements to be designed, constructed, commissioned and completed or contracted for use by the Sites Authority for the purpose of providing storage and conveyance of water for use by storage partners, as such project may be modified from time to time.

(r) “Sites Exchange Water” means the volume of SWP water, in acre-feet, representing the difference, as determined by DWR and assuming that all regulated entities fully comply with their respective regulatory requirements, between (i) the volume of SWP releases from Lake Oroville that would have been required to meet the SWP regulatory requirements and contractual obligations absent Sites Releases designated for

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Exchange, and (ii) the volume of SWP releases from Lake Oroville required to meet the SWP regulatory requirements and contractual obligations with Sites Releases designated for Exchange.

(s) “Sites Operations Plan” means the Sites Reservoir Operations Plan, which will be continually updated and approved in accordance with the Sites Authority’s governing documents.

(t) “Sites Releases designated for Exchange” means discretionary releases of Sites Water, that has been previously stored in Sites Reservoir, for the purpose of implementing an Exchange.

(u) "Sites Water" means water that is appropriated under the Sites Water Right.

(v) "Sites Water Right" means the water right obtained and owned by the Sites Authority for the Sites Reservoir Project.

(w) "State Water Board" means the California State Water Resources Control Board.

(x) "State Water Project" or "SWP" means the multi-purpose water storage and delivery system constructed and operated by DWR, as authorized by Water Code Sections 12930 et seq.

(y) “SWP Sites Participants” means those Participants that are SWP contractors holding water supply contracts with DWR or member agencies of the SWP contractors holding water supply contracts with DWR.

2. TERM OF AGREEMENT

(a) Subject to Section 2(b), this Agreement shall take effect upon due execution of this Agreement by both Parties. This Agreement shall be dated and commence as of the signature date of the last executing Party. This Agreement shall terminate on December 31, 2085, unless terminated earlier under the provisions herein or unless extended by mutual written agreement of the Parties.

(b) The effectiveness of this Agreement shall be contingent on the effectiveness of both (i) the Benefits and Obligations Contract, and (ii) the Operations Agreement. If the Benefits and Obligations Contract or the Operations Agreement terminates without a superseding agreement, this Agreement shall terminate at the same time; provided that the provisions in Sections 10 (Costs and Charges), 11 (Liability), and 16 (Dispute Resolution) shall survive the termination of the Agreement.

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3. COORDINATION PROCESS FOR EXCHANGES

(a) DWR and the Sites Authority will coordinate and make reasonable efforts to schedule Sites Releases designated for Exchange at the time and in the quantities contemplated in the operations planning for Sites Reservoir, pursuant to the Sites Operations Plan. It is anticipated that, for the purposes of Exchanges under this Agreement, Sites Releases designated for Exchange will happen primarily in late Spring through early Summer, and releases of Sites Exchange Water from SWP storage will happen at approximate times as follows: (i) for Sites Exchange Water delivered to the SWP Sites Participants – during those times when the SWP is authorized to move non-SWP water through the relevant SWP pumping facilities pursuant to the applicable regulatory requirements, and (ii) for Sites Exchange Water delivered to North of the Delta Refuges for Proposition 1 Ecosystem Public Benefits throughout the year.

(b) The Sites Authority shall notify DWR of the intended request for an Exchange and initiate operations planning in January of each calendar year, with a final operations plan completed (i) no later than March of each calendar year for Exchange operations related to Proposition 1 Ecosystem Public Benefit, and (ii) no later than June of each calendar year for Exchange operations related to water exported at the Delta Export Facilities or conveyed through the Barker Slough Pumping Plant. If agreed to by DWR in writing, dates for operations planning can be modified to conform to then current conditions without the need to amend this Agreement.

(c) DWR may approve, deny, or approve with modification the Sites Authority's request for an Exchange and shall notify the Sites Authority of its decision as soon as practically possible. DWR's determination regarding an Exchange shall be within DWR's sole discretion. The Sites Authority acknowledges and agrees that changes in forecasts and/or real-time conditions may limit DWR's ability to facilitate an Exchange, and that DWR reserves the right to withdraw or modify its approval of an Exchange based on changed forecasts or real-time conditions. The Sites Authority shall coordinate with DWR prior to proceeding with any Sites Releases designated for Exchange.

(d) Implementation of Exchanges under this Agreement is subject to capacity available in the SWP facilities, in excess of capacity determined by DWR to be needed for SWP operations or services to the SWP contractors. Nothing herein shall be interpreted as a guarantee or assurance that such excess capacity will be available at any time.

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(e) DWR and the Sites Authority agree to incorporate review of Exchange activities as part of the annual assessment under the Operations Agreement.

4. SITES RELEASES DESIGNATED FOR EXCHANGE

Sites Releases designated for Exchange shall be subject to the terms and conditions applicable to the release of previously stored water from the Sites Reservoir Project pursuant to the Operations Agreement, unless specifically provided otherwise in this Agreement.

5. RELEASES OF SITES EXCHANGE WATER FOR SWP SITES PARTICIPANTS

(a) Releases of Sites Exchange Water to be conveyed through the Delta Export Facilities or the Barker Slough Pumping Plant for delivery to the SWP Sites Participants can only occur (i) when the Delta is in Balanced Water Conditions and only during times when the SWP is authorized to move non-SWP water through the relevant pumping facilities under the applicable regulatory requirements, and (ii) at times when DWR determines that such releases can be accommodated without impacting other SWP operations or legal obligations.

(b) Conveyance of Sites Exchange Water through the Delta Export Facilities shall be subject to the provisions of Carriage Water requirement, as determined by DWR in the same manner as DWR and Reclamation calculate Carriage Water for water transfers originating from the Sacramento River.

(c) The Sites Authority shall be responsible for performing all internal Sites accounting among SWP Sites Participants receiving Sites Exchange Water and shall determine the volume of Sites Exchange Water allotted to each such Participant. The Sites Authority shall timely provide this information to DWR to use in scheduling delivery of Sites Exchange Water to applicable Participants.

(d) Nothing in this Agreement authorizes any specific conveyance of water through the SWP facilities for any Participant, and any such conveyance shall be subject to the terms and conditions of separate agreements between DWR and Sites SWP Participants. Deliveries of Sites Exchange Water to SWP Sites Participants will be scheduled pursuant to the terms of the SWP Sites Participants' respective agreements with DWR.

6. RELEASES OF SITES EXCHANGE WATER FOR PROPOSITION 1 ECOSYSTEM PUBLIC BENEFIT

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(a) Releases of Sites Exchange Water to be delivered to North of the Delta Refuges for Proposition 1 Ecosystem Public Benefit will be made at times when DWR determines that such releases can be accommodated without impacting other SWP operations or legal obligations.

(b) The Sites Authority shall be responsible for entering into any necessary conveyance agreements with local water agencies for the delivery of Sites Exchange Water from Thermalito Afterbay to North of the Delta Refuges. The Sites Authority shall furnish to DWR copies of any such agreements upon DWR's request. DWR is not responsible for the conveyance, use, effects or disposal of Sites Exchange Water once DWR makes such water available in Thermalito Afterbay.

(c) Releases of Sites Exchange Water for Sites Authority's delivery to North of the Delta Refuges shall be in accordance with a schedule approved by DWR. The Sites Authority shall coordinate with DWR and the water agencies providing conveyance from Thermalito Afterbay to North of the Delta Refuges in scheduling releases of Sites Exchange Water from SWP storage. Before initiating the first Exchange pursuant to this Agreement, DWR will provide a written notice to the Sites Authority with contact information and other DWR requirements for scheduling releases of Sites Exchange Water from SWP storage.

(d) DWR shall maintain accurate and complete records of Sites Exchange Water made available for Sites Authority's delivery to North of the Delta Refuges. The Sites Authority shall include appropriate provisions in its conveyance agreements with the local water agencies providing conveyance services for Sites Exchange Water from Thermalito Afterbay to North of the Delta Refuges requiring such local water agencies to keep accurate and complete records related to such deliveries and to provide copies of such records to DWR upon request.

(e) Nothing in this Agreement authorizes or obligates DWR or the Sites Authority to wheel, convey, or deliver Sites Exchange Water through the Delta Export Facilities for South of Delta refuge deliveries, and any such wheeling, conveyance or delivery through the SWP facilities will require a separate conveyance agreement(s) between DWR and the Sites Authority.

(f) This Section 6 shall remain in effect only for so long as the Contract for Administration of Public Benefits for Proposition 1 Ecosystem Public Benefit remains in effect.

7. ACCOUNTING FOR EXCHANGES

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(a) If DWR approves an Exchange, DWR will account for the resulting quantity of Sites Exchange Water in Lake Oroville. Sites Exchange Water shall be subject to losses, as reasonably determined by DWR, including evaporation.

(b) Each Exchange will be completed within the same calendar year, with Sites Exchange Water being released from Lake Oroville in the same calendar year as Sites Releases designated for Exchange. If the full volume of Sites Exchange Water has not been released from Lake Oroville by December 31 of any year, the account balance of Sites Exchange Water will be reduced to zero, and DWR shall be excused from any obligation to release the remaining volume of Sites Exchange Water, unless DWR, in its sole discretion, allows a later release of Sites Exchange Water in accordance with the terms and conditions of this Agreement.

(c) DWR will develop, with input from the Sites Authority, accounting principles and procedures for the storage, release, and delivery of Sites Exchange Water, including accounting for reservoir losses within Lake Oroville. The Parties acknowledge the necessity of Reclamation's concurrence with the accounting principles under this Agreement. DWR, in coordination with the Sites Authority, will work diligently and in good faith to obtain Reclamation's written concurrence with the accounting principles under this Agreement with a goal of obtaining Reclamation's programmatic concurrence for all Exchanges contemplated by this Agreement, rather than seeking a separate concurrence for each individual Exchange. If there is an accounting disagreement between DWR and Reclamation, DWR will promptly notify the Sites Authority in writing. DWR shall have no obligation to make Sites Exchange Water available under this Agreement, unless and until Reclamation concurs with the accounting principles under this Agreement.

(d) When DWR releases Sites Exchange Water from Lake Oroville, the releases will be accounted for by DWR within the existing COA accounting practices, subject to Reclamation's concurrence.

(e) Releases of Sites Exchange Water shall not be eligible for any power credits. The Parties agree that, to the best of their knowledge, implementation of Exchanges as described herein shall not result in any power cost to be charged by DWR to the Sites Authority. If DWR reasonably determines in the future that DWR incurs power-related costs associated with implementation of Exchanges pursuant to this Agreement, which costs would otherwise be borne by DWR or by the SWP contractors that are not SWP Sites Participants, DWR and Sites Authority will meet

and come to agreement on incorporating such costs into Exhibit 1 – Allowable Costs.

(f) The Sites Authority recognizes that risks of spill exist for water in Lake Oroville, including for Sites Exchange Water, for reasons that include but are not limited to flood control operations, exceedance of allowed flood control capacity, or storage capacity limitations, as determined by DWR. The Sites Authority acknowledges and agrees that, if a spill occurs, DWR will account for the Sites Exchange Water as being displaced before any other SWP water. In case of a spill, the amount of Sites Exchange Water will be reduced by the amount of the spill. DWR will promptly notify the Sites Authority of the amount of the spill and the resulting account balance of Sites Exchange Water. DWR shall not be responsible to the Sites Authority, the intended recipients of the Sites Exchange Water or any other entities for any shortages or unavailability of the Sites Exchange Water due to a spill.

(g) Each Party shall maintain accurate records documenting release and delivery of water pursuant to this Agreement and shall provide such records to the other Party upon request.

8. COMPLIANCE WITH LEGAL REQUIREMENTS

(a) Implementation of Exchanges under this Agreement shall be contingent upon and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. The Sites Authority shall be responsible for complying with all applicable laws and legal requirements and for securing any required consent, approval, permit, or order required for implementation of Exchanges under this Agreement. The Parties acknowledge and agree that, to the best of their knowledge, implementation of Exchanges as described in this Agreement is consistent with the existing environmental coverage for the Sites Reservoir Project under the California Environmental Quality Act and with the Parties' respective water rights.

(b) Releases of Sites Exchange Water made under this Agreement shall be limited to quantities, place of use, purposes of use, and all other terms of the SWP water rights, so that this activity can be made in a manner that does not result in the need for a temporary change petition to be filed with the State Water Board. DWR and the Sites Authority shall jointly be responsible to ensure that the releases of Sites Exchange Water are delivered to SWP Sites Participants and Proposition 1 Ecosystem Public Benefits in a manner that meets any and all applicable water right permit or license requirements.

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9. NO IMPACT

(a) This Agreement shall not be administered or interpreted in any way that would affect DWR's ability to comply with applicable laws, regulations, biological opinions and incidental take permits, court orders or contractual obligations in place at the time of the release and delivery of water. DWR may terminate or suspend implementation of an Exchange if DWR reasonably determines that an Exchange has resulted or may result in such non-compliance.

(b) This Agreement shall not be administered or interpreted in any way that would cause negative impact, as reasonably determined by DWR, to any SWP water allocations, water deliveries, or SWP operations or facilities. DWR may terminate or suspend implementation of an Exchange if DWR reasonably determines that any such negative impact has occurred or may occur.

(c) Nothing in this Agreement, including as it may be amended, shall be interpreted as altering or amending the COA or any water rights.

(d) This Agreement does not create any rights to storage of Sites Water in SWP facilities and shall not be interpreted as allowing such storage.

10. COSTS AND CHARGES

(a) Sites Authority shall be responsible to annually pay DWR "use of facilities" charges, on a per acre-foot basis, for the use of the SWP infrastructure involved in implementation of the Exchanges. Prior to December 31 of the first calendar year when the Sites Reservoir Project expects to commence operations and then prior to December 31 of each calendar year thereafter, DWR will notify the Sites Authority in writing of the use-of-facilities charges to be in effect during the following calendar year.

(b) The Sites Authority shall also be responsible for the costs incurred by DWR to assist in the implementation of the Sites Reservoir Project. Such Allowable Costs shall be subject to the requirements of Exhibit 1 - Allowable Costs. The Sites Authority acknowledges and agrees that Allowable Costs are not limited to the costs associated with implementation of Exchanges pursuant to this Agreement, but also include costs associated with other DWR actions or activities for the purpose of assisting in the implementation of the Sites Reservoir Project.

(c) 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. All payments under this Agreement, including Exhibit 1

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– Allowable Costs, are due and payable within thirty (30) days after the date of the invoice. Unpaid amounts of such invoices will become delinquent after the due date and interest shall accrue thereon at a rate of one (1) percent per month from the date the payment was due. However, no interest shall be charged unless delinquency continues for more than thirty (30) days.

(d) In the event that the Sites Authority in good faith contests the accuracy of any invoice submitted pursuant to this Agreement, the Sites Authority shall provide DWR with notice of a dispute at least ten (10) days prior to the date upon which payment of the stated amounts is due, and such notice shall identify the disputed amounts and explain the alleged inaccuracy or other deficiency with particularity. To the extent DWR finds the Sites Authority's contentions regarding the invoice to be correct, DWR shall revise the invoice accordingly, and the Sites Authority shall make payment of the revised invoice on or before the due date. To the extent DWR does not find the Sites Authority's contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the Sites Authority shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from DWR.

(e) If, by reason of errors in computation or other causes, there is an overpayment or underpayment to DWR by the Sites Authority, the amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the Sites Authority's account for the next invoice period.

(f) DWR may terminate this Agreement if the Sites Authority fails to fully or timely pay DWR charges pursuant to this Agreement, including Exhibit 1 – Allowable Costs, and fails to cure such failure to pay within 60 days of receiving DWR's written notice.

11. LIABILITY

(a) The Parties agree that this Agreement is entered for the primary benefit of the Sites Authority to assist in the implementation of the Sites Reservoir Project. To that end, the Sites Authority agrees to defend and hold DWR, and its respective officers, employees, and agents harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, and its respective officers, employees, and agents from all lawsuits, costs, damages, judgments, attorneys' fees, and liabilities that DWR, its officers, employees, and agents incur as a result of DWR approving this Agreement or implementing this Agreement, except to the extent resulting from the negligence or willful misconduct of DWR or its officers, employees, and agents.

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(b) If uncontrollable forces preclude either Party from performing their non-monetary obligations under this Agreement, either partially or completely, then such party is relieved from the obligation to release and/or deliver the water under this Agreement to the extent that such party is reasonably unable to complete the obligation due to the uncontrollable forces. Uncontrollable forces shall include, but are not limited to, earthquakes, fires, tornadoes, floods, and other natural or human caused disasters.

12. NOTICES

The Parties shall use the following contact information for their coordination activities and notices pursuant to this Agreement. Any such notice shall be in writing and either sent by first class mail, postage prepaid, or by electronic mail followed by written notice sent by U.S. mail. A Party can update its contact information by providing a written notice to the other Party, without the need to amend this Agreement.

Assistant Division Manager of Water Management
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001
Email: ADMWM_Managers@water.ca.gov

Sites Authority
Post Office Box 517
Maxwell, California 95955
Admin@sitesproject.org

13. UNIQUENESS OF AGREEMENT

DWR's approval to facilitate Exchanges pursuant to this Agreement is unique and shall not be considered a precedent for future agreements or DWR activities.

14. AMENDMENTS

DWR and the Sites Authority acknowledge and agree that laws and regulations that govern water operations may change over time and there may be a need to revise this Agreement. DWR and the Sites Authority will periodically review and, if needed, modify this Agreement. When there is a need to modify this Agreement, the Parties will meet and confer and negotiate in good faith to execute an amendment to this Agreement in writing.

15. ASSIGNMENT

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This Agreement is not assignable by the Sites Authority, in whole or in part, without the prior written consent of DWR, unless such assignment results from legislative action.

16. DISPUTE RESOLUTION

In the event of dispute regarding interpretation or implementation of this Agreement, the Director of DWR and the general manager of the Sites Authority, or their authorized representatives, shall endeavor to meet within 30 days after the request of a Party and attempt to resolve the dispute. If the dispute remains unresolved, the matter will be resolved by a decision made by the Director of DWR.

17. SECTION HEADINGS

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

18. OPINION AND DETERMINATION

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any Party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

19. FURTHER DOCUMENTATION

The Parties agree to endeavor to execute any further documents reasonably necessary to affect the terms of this Agreement, as long as the terms and provisions of the other documents are fully consistent with the terms of this Agreement.

20. INTERPRETATION

In this Agreement, unless the context otherwise requires:

(a) The singular includes the plural and vice versa;

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

(c) The words "including," "includes" and "include" are deemed to be followed

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by the words "without limitation";

(d) A reference to a Section is a reference to a Section of this Agreement;

(e) A reference to any entity includes such entity's successors and permitted substitutes and assigns; and

(f) Words of any gender used in this Agreement shall include each other gender where appropriate.

21. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

22. COUNTERPARTS; ELECTRONIC EXECUTION

The Parties agree that this Agreement may be executed in several counterparts, each 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.

23. SEVERABILITY

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

(1) promptly meet and make good faith efforts to negotiate a substitute for such provision or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including (as applicable) an appropriate adjustment to obligations to be performed or payments to be made in accordance with this Agreement to account for any change in the implementation of this Agreement resulting from such invalidated portion; and

(2) 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.

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

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invalid or unenforceable provision or part, unless severability of such invalid or unenforceable provision or part causes a material detriment to any Party.

24. 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.

25. CONSTRUCTION OF LANGUAGE

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

26. SUCCESSORS

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

[Signatures on the following page.]

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

Approved as to Legal Form
and Sufficiency

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

Date_____

State of California
Department of Water Resources

Tom Gibson
Director

Date_____

Sites Project Authority

Jerry Brown
Executive Director

Date

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EXHIBIT 1
TO AGREEMENT FOR EXCHANGES OF WATER
BETWEEN THE SITES RESERVOIR PROJECT AND STATE WATER PROJECT

Allowable Costs

1. PURPOSE AND RELATIONSHIP OF THIS EXHIBIT TO AGREEMENT

(a) This Exhibit is incorporated into and made part of the Agreement for Exchanges of Water Between the Sites Reservoir Project and State Water Project (referred to herein as "Exchange Agreement"), entered into by the Sites Authority and DWR. Although this Exhibit is part of the Exchange Agreement, the Parties agree that the costs subject to this Exhibit shall also include DWR staff costs associated with implementation of certain other agreements and DWR activities related to the development and implementation of the Sites Reservoir Project, including:

(1) Exchange Agreement;

(2) 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 (Operations Agreement); and

(3) Other DWR activities to assist in the planning, construction and implementation of the Sites Reservoir Project, as described in this Exhibit.

(b) The purpose of this Exhibit is to:

(1) Define what constitutes Allowable Costs subject to reimbursement by the Sites Authority pursuant to this Exhibit;

(2) Establish clear approval, documentation, invoicing, and record keeping standards applicable to Allowable Costs; and

(3) Provide a consistent framework for calculation and valuation of Allowable Costs.

(c) In the event of a conflict between this Exhibit and the main body of the Exchange Agreement, this Exhibit shall control with respect to cost eligibility, valuation, and approval.

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(d) Capitalized terms used in this Exhibit shall have the meaning set forth in the Exchange Agreement, unless defined otherwise herein.

2. GOVERNING PRINCIPLES

(a) The Sites Authority shall reimburse DWR for all Allowable Costs incurred by DWR, as provided in this Exhibit. Expiration or termination of the Exchange Agreement shall not affect the obligation of the Sites Authority to pay all amounts owed to DWR pursuant to this Exhibit.

(b) All Allowable Costs must be:

(1) Described herein;

(2) Consistent with State law; and

(3) Determined, documented, and invoiced in accordance with Section 10 of the Exchange Agreement, including this Exhibit.

(c) Costs not meeting the criteria listed in paragraph 2(b) are not Allowable Costs unless expressly approved in writing by both Parties.

3. CATEGORIES OF ALLOWABLE COSTS

The following costs shall be considered Allowable Costs and shall be subject to reimbursement by the Sites Authority pursuant to this Exhibit:

(a) Sites Planning and Pre-Construction Costs: DWR's costs associated with planning and pre-construction activities for the Sites Reservoir Project are expected to be minimal, except for the potential activities associated with studies related to the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, as addressed in the Sites Reservoir Project Incidental Take Permit (ITP), which requires coordination between the Sites Authority, DWR, and Reclamation. The relevant Allowable Costs include:

(1) DWR staff time to engage in the ITP-required coordination with the Sites Authority and Reclamation, and DWR staff time to develop and implement the ITP-required studies. At the time of developing the study plans, the Sites Authority and DWR will come to agreement on the scope, estimate and payment schedules for Allowable Costs related to the ITP-required coordination and studies, and will update this Exhibit to incorporate such costs herein.

(2) Long-term DWR costs associated with implementation of a plan(s) to minimize and mitigate, if applicable, Sites Reservoir Project

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impacts to the Salmonid Habitat Restoration and Fish Passage Project operations. If any such long-term DWR costs are identified, these costs will be incorporated into the Administrative Charge pursuant to paragraph 3(b) of this Exhibit, unless the Parties agree to a different mechanism for payment of such DWR costs.

(b) Annual Administrative Charge: The Sites Authority agrees to pay DWR an annual Administrative Charge starting in the year immediately preceding the determination by Sites Authority that the Sites Reservoir Project is operationally complete as follows.

(1) The purpose of the Administrative Charge is to cover DWR costs related to operations coordination specific to the Sites Reservoir Project, including but not limited to:

(A) DWR staff time to engage in coordination and assessment for Sites Reservoir Project operations as described in the Operations Agreement;

(B) DWR staff time to coordinate releases of Sites Water for export at Banks Pumping Plant or conveyance through the Barker Slough Pumping Plant;

(C) DWR staff time to coordinate, implement and account for exchanges of water pursuant to the Exchange Agreement; and

(D) DWR staff time to administer the Operations Agreement and Exchange Agreement.

(2) The Administrative Charge will be an annual flat fee based on DWR's estimate of DWR staff costs, and applicable hourly rates, associated with DWR's operations coordination specific to the Sites Reservoir Project for the relevant calendar year. The Administrative Charge shall not include any costs related to DWR's general water rights administration and monitoring or other operational activities that would have been incurred by DWR in the absence of the Sites Reservoir Project.

(3) By March 1 of the year preceding the year of anticipated commencement of the Sites Reservoir Project operations, DWR will notify the Sites Authority of the applicable proposed Administrative Charge in effect for the first five (5) calendar years of the Sites Reservoir Project operations, including any applicable annual increases for inflation. At the Sites Authority's request, DWR shall

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provide the Sites Authority with documentation substantiating the amount of the Administrative Charge.

(4) The Administrative Charge is subject to DWR's redetermination every five (5) calendar years. DWR shall provide the Sites Authority with a notice of an updated Administrative Charge by March 1 of the year preceding the calendar year when the updated Administrative Charge becomes effective. At the Sites Authority's request, DWR shall provide the Sites Authority with documentation substantiating any material increase in the Administrative Charge.

(c) Other Allowable Costs: Other Allowable Costs include other identified demonstrable costs incurred by DWR as a result of DWR's activities to assist the Sites Authority in planning, construction and/or implementation of the Sites Reservoir Project, which costs, unless reimbursed by the Sites Authority, would result in increased charges to the SWP contractors that are not Participants or increased costs to DWR. If DWR identifies such other Allowable Costs, it shall promptly notify the Sites Authority and provide substantiating documentation. The Sites Authority and DWR shall meet and come to agreement on the scope, estimate and payment schedules for such other Allowable Costs, and will update this Exhibit to incorporate such costs herein.

4. RECORDS, AUDIT, AND RETENTION

(a) Each Party shall maintain accurate and complete records to support claimed Allowable Costs.

(b) Records shall be retained for the longer of: (i) applicable statutory requirements, or (ii) seven (7) years following final reconciliation.

(c) Each Party shall have reasonable audit rights over costs charged and paid under this Exhibit.

5. AMENDMENTS TO THE EXHIBIT

This Exhibit may be amended by mutual written agreement of the Parties without amendment to the main body of the Exchange Agreement.

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