MEMORANDUM OF AGREEMENT
FOR THE PRE-CONSTRUCTION PHASE OF THE
SITES RESERVOIR PROJECT
AND
SHARING OF COSTS
By and Between
United States Department of the Interior
Bureau of Reclamation, California-Great Basin
and
Sites Project Authority

This Memorandum of Agreement (MOA) is made and entered into by and between the United States Department of the Interior, Bureau of Reclamation, California-Great Basin (Reclamation), and the Sites Project Authority (SPA) (Parties) for the purposes of undertaking and completing Preconstruction Activities (post-feasibility activities) for the Sites Reservoir Project (Project).

WHEREAS, Reclamation, in coordination with SPA, developed a Final Feasibility Report (FFR) for the Project, which was delivered to Congress on December 22, 2020, by the Secretary of Interior (Secretary) notifying Congress of the Secretary’s determination and concurrence of feasibility as specified in the Water Infrastructure Improvements for the Nation Act (WIIN Act) Section 4007(c); and

WHEREAS, on August 11, 2017, SPA submitted a Proposition 1 Water Storage Investment Program funding application for the Project, and on July 24, 2018, the California Water Commission determined that the Project was eligible for up to $816 million of funding; and

WHEREAS, on January 21, 2021, the California Water Commission determined that the Project was eligible for an additional $20.4 million of funding to adjust for inflation; and

WHEREAS, SPA and Reclamation have entered into a “Memorandum of Understanding for Completion of the North-of-the-Delta Offstream Storage Investigation and Sharing of Costs” dated July 14, 2015, and subsequently amended on December 16, 2019 (the “First Amendment to the Memorandum of Understanding for Completion of the North-of-the-Delta Offstream Storage Investigation and Sharing of Costs”), which provides specified financial contributions and in-kind services by SPA to fund Project development; and

WHEREAS, SPA and Reclamation desire to enter into an MOA for the Project, as defined by the scope in Article 5(c) of this MOA; and

WHEREAS, Reclamation is hereby joining SPA in conducting and advancing the Project, and each entity recognizes the unique relationships and opportunities, mutual and exclusive needs and dependencies, Federal and non-Federal standards and procedures, potential outcomes and applications of the preconstruction activities, and related decision-making and approval processes; and

WHEREAS, Reclamation is the lead agency for the purpose of compliance with the National Environmental Policy Act (NEPA) and SPA is the lead agency for the purpose of compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, Reclamation is the lead agency for compliance with the Endangered Species Act (ESA) for the purpose of planning, design, construction, and operations including coordinated operations of the Project with the Central Valley Project, and maintenance, and will initiate consultations under Section 7 of ESA; and

WHEREAS, Reclamation is the lead agency for purpose of compliance with National Historic Preservation Act and will initiate consultations under Section 106 of the Act; and

WHEREAS, SPA is the lead agency for the purpose of compliance with Section 401 and 404 of the Clean Water Act; and

WHEREAS, SPA is the lead agency for the purpose of compliance with the California Water Code for the operations of the Project and Reclamation is the lead agency for the purposes of modifying its water rights, if necessary; and

WHEREAS, Reclamation and SPA have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing in the Preconstruction Activities of the Project in accordance with the terms of this MOA; and

WHEREAS, the State-led Sites Reservoir Project has met the criteria of under construction per WIIN Section 4013 and WIIN Section 4011. WIIN Section 4011 defines the term construction: “The term ‘‘construction’’ means the designing, materials engineering and testing, surveying, and building of water storage including additions to existing water storage and construction of new water storage facilities, exclusive of any Federal statutory or regulatory obligations relating to any permit, review, approval, or other such requirement.”

NOW, THEREFORE, the Parties agree as follows:

1. Definitions: The following terms shall have the following meanings when used in this MOA:

1(a) Parties: Shall mean Reclamation and SPA.

1(b) Cost-Sharing: Shall mean the Parties’ contribution as in-kind services, as further defined in Articles 1(c) and 5(a) of this MOA, and contributed funds, if a separate Contributed Funds Agreement is executed by the Parties.

1(c) In-Kind Service: Shall mean eligible donated time and effort, real and personal property, and goods and services, as defined by the Department of the Interior. In-kind services may be used as a cost-share, but the value of the in-kind contributions must be evaluated and documented. Valuation of in-kind services shall be in accordance with 2 CFR Part 200.

1(d) Confidential Information: Shall mean any information that is privileged or protected from public release under the Freedom of Information Act (FOIA), 5 USC § 552(b), or the California Public Records Act (CPRA), California Government Code § 6250 et. seq.

1(e) Intellectual Property: Shall mean any information that is legally protected through patents, copyrights, trademarks, and trade secrets, or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.

1(f) Confidential Business Information: Shall mean trade secrets or commercial or financial information that is privileged or confidential under the meaning of FOIA, 5 USC § 552(b)(4), or the CPRA. Information shall be marked or identified as provided for in Article 7(c) of this MOA.

1(g) Key Personnel: Shall mean team members involved in the administration, management, or performance of the Preconstruction Activities as defined in this MOA.

1(h) Subject Invention: Shall mean any invention or other intellectual property conceived or first reduced to practice under this MOA which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.

1(i) Project Management Plan (PMP): Shall mean the document prepared by Reclamation in coordination with SPA, and routinely updated by Reclamation in coordination with SPA throughout the duration of the Project to reflect the current Project schedule and approach, that serves as a guideline describing how the Parties will manage and conduct the Project.

1(j) Preconstruction Activities: Those initial activities that include, but are not limited to, planning, engineering, design, environmental permitting, and water rights applications and/or change petitions that occur after the Secretary of the Interior notifies Congress of its determination of feasibility and through final design.

1(k) Non-Federal Proportionate Cost-Share: The percentage of the total construction cost of the Project assigned to SPA, the non-Federal partner(s), in accordance with Article 5(a) of this MOA.

1(l) Federal Proportionate Cost-Share: The percentage of the total construction cost of the Project assigned to the Federal Government, in accordance with Article 5(a) of this MOA.

1(m) Non-Federal Partners: All non-federal parties participating in the Project including SPA, Local Agency Partners, and the California Water Commission.

1(n) Local Agency Partners may include: Antelope Valley East Kern WA, Carter Mutual Water Company, City of American Canyon, Coachella Valley Water District (WD), County of Colusa, Colusa County WD, Cortina WD, Davis WD, Dunnigan WD, Desert WA, Glenn Colusa Irrigation District, Irvine Ranch WD, LaGrande WD, Metropolitan Water District of Southern California, RD-108, Rosedale-Rio Bravo WSD, San Bernardino Valley Municipal WD, San Gorgonio Pass WD, Santa Clara Valley WD, Santa Clarita Valley Water Agency, Westside WD, Zone 7 Water Agency, and Wheeler Ridge-Maricopa WSD.

2. Purpose of MOA: The Parties agree that the purpose of this MOA is to clearly define the obligations and responsibilities of the Parties to complete Preconstruction Activities and specified documents consistent with the Final Feasibility Report, Addendum, PMP, and Project authorizing legislation, if any, and to share costs as outlined herein, consistent with the authorizations identified in Article 3 of this MOA and other pertinent Federal, State, and local laws and policy.

3. Authority for MOA: Reclamation is authorized to enter into this MOA pursuant to the WIIN Act, as enacted on December 16, 2016 (P.L. 114-322).

4. Roles and Responsibilities of Reclamation and SPA

4(a) Executive Steering Committee (ESC): Each Party to this MOA will assign an executive-leadership-level representative to participate on the ESC for the duration the term of this MOA. Members of the ESC will provide both program and project leadership, address issues affecting Project progress, and identify and strategize resolution of evolving issues or conditions. The ESC will meet on an as-needed basis.

4(b) Project Management Team (PMT): A PMT shall be established. Each Party will identify a Project Manager and representatives to participate on the PMT, and any technical teams and subgroups. Meetings will be held as needed and only if necessary beyond the responsibilities of the Project Development Team (Article 4(c)) and used to track the status of the Preconstruction Activities, coordinate reviews of documents, share both Parties’ perspectives on various topics, prepare briefings for the ESC, and any other items the Parties wish to discuss related to the Project. The PMT shall, on a quarterly basis, share an accounting of the actual expenses incurred by each Party under this MOA in accordance with Article 5 of this MOA.

4(c) Project Development Team (PDT): A PDT shall be established to provide day-to-day oversight and review of work products. Each Party will identify representatives to participate on the PDT. The PDT is expected to meet as needed to maintain the progress of the Project

4(d) Term Sheet Development Team (TSDT): A TSDT shall be established as a subgroup to PMT. Each Party will identify representatives to participate on the TSDT. The purpose of the TSDT is to assist SPA in developing a draft term sheet and final operating agreement for the Project that identifies proposed reservoir operations; effects, if any, on Central Valley Project and State Water Project operations; financial considerations for Federal funding of the Project; use of Federal facilities and CVP Project power; water rights and permitting considerations; and effects to any other parties not a signatory to this MOA. Participation in the TSDT is not limited to the Parties. Non-party stakeholders may participate in and be a member of the TSDT if it is agreed upon by the Parties and the non-party stakeholder has special expertise with respect to any operational impact involved in the Project. The TSDT is expected to meet biweekly to maintain the progress of the Project.

4(e) Cooperative Partnership: The Parties will participate cooperatively as both cost-share and Project partners to complete the Preconstruction Activities effectively and efficiently, with intent to manage and perform joint and/or separate activities; monitor and account for actions; and produce documents for review, revision, and distribution to support decision-making, approval, and related actions. The Parties commit to sharing all required documents (e.g., technical memoranda, draft and final reports, supporting materials, work products, and summaries of expenditures and expenses) within their respective authorities. Each Party is responsible for ensuring their respective policy, technical, and legal requirements are met. The Parties agree to meet the Project Schedule to the extent practicable.

4(f) Coordination with Local Water Agencies: SPA will coordinate with the local water agencies if and when any additional parties sign a Project Agreement with SPA with the intent to perform joint and/or separate activities needed to contribute to the Project, including but not limited to development of local water supply demands and reservoir facilities and operations.

5. Financial Obligations

5(a) Cost-Sharing: Reclamation and SPA will share the eligible costs of the Preconstruction Activities and any supporting documentation within the Scope of the Project. The proportionate cost-share between SPA and Reclamation is established by the total construction cost assignment percentage split between the Federal assigned percentage and the non-Federal assigned percentage. The assigned proportionate cost-share will be determined during the Preconstruction phase of the Project as costs, benefit calculations, and/or categories are refined. Reclamation’s proportionate cost-share for a State-led storage facility shall not exceed 25% of the total actual Project cost. SPA may include Local Agency Partners contributions as specified in the Project Agreement towards its share of eligible costs consistent with Article 5 of this Agreement.

5(a)(1) In accordance with Reclamation Directives and Standards, SPA shall account for the actual expenses incurred by the non-Federal partners participating in the Project. These expenses shall be provided to Reclamation on a quarterly basis. Requirements of such accounting shall, at a minimum, include the following:

5(a)(1)(i) An explanation, in the form of a progress report, of the work performed for each activity completed during the reported quarter.

5(a)(1)(ii) Progress reports shall include a summary of all costs incurred b including Local Agency Partners. Allowable costs include payroll costs, contract costs, overhead costs, expense vouchers, and other costs as provided in the applicable Office of Management and Budget regulations. Each activity should be supported by reports from SPA’s financial system as well as the local water agencies’ financial systems providing a breakdown of actual costs incurred for the current submission and total costs to date for each activity.

5(a)(1)(iii) A cover letter or memorandum signed by an authorized representative of SPA should accompany the submission. The cover letter shall reference this MOA and any enclosures (i.e., progress report, expenses/payroll summary).

5(a)(1)(iv) Reclamation will prepare similar progress reports describing costs incurred by Reclamation and will submit them to the SPA on a quarterly basis.

5(b) Financial Obligations: This MOA is not a funding document and does not obligate or transfer funds between the Parties. Reclamation, subject to the availability of funds through the Federal appropriations process for this Project, shall expend funds on federally authorized Preconstruction Activities pursuant to Federal laws, regulations, and policies, or may enter into a Financial Assistance Agreement with SPA for the purpose of sharing costs for those activities led by SPA.

5(c) Scope of the Project: The initial scope of work and level of effort are defined in the Water Storage Investment Program requirements, Addendum to the Final Feasibility Report, PMP, SPA actions and resolutions, Federal authorizing legislation, and any relevant Reclamation Directive and Standard for Preconstruction and/or Construction to the extent applicable for a local-led storage project. When the Parties identify new tasks, the scopes and requirements for those tasks will be negotiated between the Parties. The PMP can be updated as required in coordination with SPA.

5(d) In-Kind Services: Submission of documentation for in-kind services shall be submitted quarterly by the SPA and Reclamation. Quarterly accounting must detail work done for agreed-upon items. Only costs incurred against a cost-share agreement need to be documented and submitted for approval. Project numbers must be used to distinguish various tasks and work phases. Items required for proper verification of work done include certified payroll, applicable contract numbers (i.e., consultant contracts), quarterly reports that coincide with Federal reporting requirements and generally accepted accounting principles, identification of cost-share partners, and scopes of work. Services cannot be included in any other Federal award in a current or prior period and their value must be based upon current market prices.

5(e) Following the termination of this MOA, Reclamation shall perform a final accounting in accordance with Article 5 of this MOA to determine the contributions provided by SPA and to determine whether SPA has met its proportionate cost-share obligation.

5(f) SPA shall not use Federal funds to meet SPA’s share of the Preconstruction costs under this MOA, unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

6. Term and Termination

6(a) Term: This MOA shall take effect on January 1, 2021. Unless terminated per Article 6(e), this MOA will expire 5 years from the date of Reclamation’s signature to this MOA or upon a final accounting of all Preconstruction Activities in accordance with Article 5, whichever is earlier.

6(b) Amendment: If either Party desires a modification to this MOA, the Parties shall confer in good faith to determine the desirability of such modification. Any amendment must be mutually agreed upon in writing by Reclamation and SPA. Any such modification shall not be effective until a written amendment to this MOA is signed by Reclamation and SPA.

6(c) Addition of non-Federal Cost-Share Partners by SPA: SPA retains sole discretion to add local water agencies as signatories to the Cost-Share Agreement for Sites Reservoir Project Planning, or to any subsequent joint powers agreement, for the purpose of considering these agencies as potential partners in Project implementation, including appropriate cost-share arrangements. SPA shall notify Reclamation of such negotiations, if they occur.

6(d) Addition of Project Cost Share Partners by Reclamation: Reclamation may enter into additional agreements for the purpose of undertaking and completing all relevant Preconstruction Activities related to the Project, including but not limited to appropriate cost-share arrangements to reduce the Federal cost-share of the Project. Reclamation will notify SPA of such negotiations, if they occur.

6(e) Termination: Prior to the expiration of this MOA, and upon no fewer than sixty (60) calendar days written notice to the other Party, either Party may elect to terminate this MOA or to suspend future performance under this MOA without penalty. In the event that either Party elects to terminate this MOA pursuant to this Article, the Parties shall conclude their activities under this MOA and proceed to a final accounting in accordance with Article 5 of this MOA. Any termination of this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously incurred.

6(f) Suspension: If either Party suspends its performance, the other Party is relieved of any obligation to perform under this MOA until the suspension is terminated. Any such suspension shall remain in effect until either Reclamation or SPA terminates this MOA, the MOA terminates per Article 6(a), or the suspending Party notifies the other Party of its intent to end the suspension and perform in accordance with this MOA. Any suspension of future-performance under this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously incurred. Financial Obligations and payment for in-kind services to the date of suspension or termination shall be satisfied.

7. Publications, Reports, and Confidentiality

7(a) Publications: The Parties understand and agree that this MOA may be disclosed to the public in accordance with either FOIA or the CPRA. Subject to the requirements of confidentiality, intellectual property, and preservation of rights in Subject Inventions, as further described in Articles 1(d), 1(e), 1(f), and1(h) herein, either Party may publish the results of the Project described in this MOA. Any jointly published report, memorandum, whitepaper, technical report, or other document must be consistent with applicable Department of the Interior and Reclamation procedures, requirements, and policy, provided:

7(a)(1) The other Party is allowed reasonable review time to review the proposed publications(s) at least twenty (20) days prior to submission for publication by submission to the authorized agent.

7(a)(2) The final decision as to the publication content rests with the Party that writes the publication(s).

7(b) Reports: The results of the science, engineering, operations, and technology data that are collected, compiled, and evaluated pursuant to this MOA, including interim administrative drafts, and final draft reports and/or supporting documents, shall be shared and mutually interchanged by the Parties, consistent with Article 4 of this MOA, and pertinent Reclamation directives, standards, and policy.

7(c) Confidentiality: Any Confidential Information or Confidential Business Information used in implementing this MOA shall be clearly marked “CONFIDENTIAL” or “PROPRIETARY” by the submitter, and shall not be disclosed by the recipient without permission of the owner in accordance with applicable law (for example, Executive Order 12600) and this MOA. To the extent either Party orally submits such Confidential Information or Confidential Business Information to the other Party, the submitting Party will prepare a document marked “CONFIDENTIAL” or “PROPRIETARY” embodying or identifying in reasonable detail such orally submitted information and provide the document to the other Party within thirty (30) days of disclosure.

Any Confidential Information or Confidential Business Information disclosed by one Party to the other Party shall remain confidential and protected from disclosure to the maximum extent allowable by applicable law. Neither Party shall be bound by confidentiality if the information received from the other Party:

7(c)(1) Is already available to the public or the recipient.

7(c)(2) Becomes available to the public through no fault of the recipient.

7(c)(3) Is non-confidentially received from another Party legally entitled to it.

It shall not be a breach of this MOA if the recipient of the information is required to disclose the information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either Party under this MOA; provided that the recipient of the information shall provide prompt prior notice thereof to the other Party in order to seek a protective order or otherwise prevent such disclosure, and provided further that the information otherwise shall continue to be confidential.

7(d) Intellectual Property: Unless otherwise agreed by the Parties, custody and administration of inventions, including Subject Inventions, made as a consequence of, or in direct relation to, the performance of activities under this MOA shall remain with the respective inventing Party. In the event that an invention is made jointly by employees of the Parties or an employee of an agency’s contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

8. General

8(a) Liability: It is understood and agreed that neither Party to this MOA shall be responsible for any damages or injuries arising out of the conduct or activities governed by this MOA, except to the extent that such damages or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. Reclamation’s liability shall be limited by the Federal Tort Claims Act. 28 USC § 2671, et seq., while SPA’s liability shall be limited by the California Government Claims Act, California Government Code § 810 et seq. Neither Party shall be liable for the negligent or wrongful acts or omissions of the other Party’s employees, agents, or officers.

8(b) Limitations: This MOA sets out the Parties’ intentions and objectives and does not apply to any person or entity outside SPA and Reclamation. This MOA is not intended to and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person, unless expressly stated herein.

8(c) Notices: Notices between the signatories and copies of correspondence shall be sent to the Reclamation and SPA points of contact below:

**Bureau of Reclamation**

Ernest A. Conant

Regional Director

2800 Cottage Way

Sacramento, CA 95825

(916) 978-5000

**Sites Project Authority**

Jerry Brown

Executive Director

122 Old Highway 99W

Maxwell, CA 95955

8(d) Anti-Deficiency Act: All activities, responsibilities, and communications made under or pursuant to this MOA are subject to the available appropriations and each Parties’ budget priorities, as determined by each Party. No provision herein shall be interpreted to require obligation or payment of funds. Further, no provision shall be interpreted in violation of the Anti-Deficiency Act, 31 USC § 1341, and no liability shall accrue to the United States in the event that funds are not appropriated or allotted. No liability of one party may be transferred to the other party.

8(e) Counterparts: This MOA shall be executed in duplicate and each original, once fully executed, shall be equally effective.

8(f) Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise to carry out its obligations in this MOA shall ensure that any subcontractor is aware of and abides by the terms of Article 7 of this MOA to ensure that confidentiality is not breached and rights in Subject Inventions are not compromised.

8(g) Assignment: Neither Party has the right to assign this MOA, or any of its responsibilities hereunder, without the written consent of the non-assigning Party.

8(h) Endorsement: SPA shall not in any way state or imply that this MOA, or the results of this MOA, is an endorsement by the Federal government, Department of the Interior, or Reclamation, or its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.

8(i) Regulatory Compliance: Both Parties acknowledge and agree to comply with all applicable laws and regulations, including environmental, cultural, and paleontological resource protection laws and regulations, in carrying out the activities or projects under this MOA. These regulatory compliance requirements may include, but are not limited to, the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, applicable implementing regulations, and consultation with potentially affected Federally recognized tribes.

8(j) Disputes: Any dispute arising under this MOA which cannot be readily resolved shall be submitted jointly to the Key Personnel officials identified above. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes if mutually acceptable to the Parties. Pending the resolution of any dispute or claim, the Parties agree that performance of all obligations shall be pursued diligently.

9. Signatures and Authorities: In Witness Thereof, the Parties execute this MOA on the date and year indicated below, which shall become effective upon the signatures of both Parties.

9(a) Bureau of Reclamation

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGION 10 □ CALIFORNIA-GREAT BASIN

Regional Director Date

9(b) Sites Project Authority

SITES PROJECT AUTHORITY

Authorized Representative Date