

**SITES PROJECT AUTHORITY'S
AMENDED AND RESTATED
PHASE 1 RESERVOIR PROJECT AGREEMENT**

THIS AMENDED AND RESTATED PHASE 1 RESERVOIR PROJECT AGREEMENT (the "**Project Agreement**") is made effective as of November 21, 2016, by and among (a) the Sites Project Authority (the "**Authority**") and (b) certain Members and/or Non-Member Participating Parties, listed on the attached **Exhibit A1** (collectively the "**Project Agreement Members**"), and is made with reference to the following facts:

RECITALS

A. Various public agencies in the Sacramento River Watershed, including certain Project Agreement Members, entered into the Modified Third Amended and Restated Sites Project Authority Joint Exercise of Powers Agreement, dated December 21, 2015 (the "**Joint Powers Agreement**"), pursuant to which they formed the Authority to develop the Sites Reservoir Project, which is contained in the CalFed Bay-Delta program Programmatic Record of Decision, August 28, 2000. The Joint Powers Agreement provides a mechanism for "Project Agreements" (as defined in the Joint Powers Agreement) to undertake specific work activities for the development of the Sites Reservoir Project. On December 21, 2015, the Authority's Board of Directors ("Board") also adopted Bylaws for Phase 1 of the Sites Reservoir Project ("**Bylaws**"), which were amended on December 21, 2015, and which also address Project Agreements and their management through Reservoir Project Committees.

B. On April 11, 2016, certain Authority Members of the Authority entered into the PHASE 1 RESERVOIR PROJECT AGREEMENT. Thereafter, the Authority undertook a process to allow for additional Members and Non-Members Participating Parties to become part of the Phase 1 Reservoir Project Agreement, and in certain instances, consistent with the Bylaws, to become Authority Members. The deadline for such additional participation in the Project was August 1, 2016. This AMENDED AND RESTATED PHASE 1 RESERVOIR PROJECT AGREEMENT, provides for the addition of certain Project Agreement Members who have asked to be a party to this Project Agreement and their addition to the PHASE 1 RESERVOIR PROJECT AGREEMENT has been approved pursuant to Section 9 of the original PHASE 1 RESERVOIR PROJECT AGREEMENT by the then Project Agreement Members and the affirmative vote of at least 75% of the total number of Directors of the Authority.

C. The Project Agreement Members wish to undertake the Project described on the attached **Exhibit B** (the "**Phase 1 Reservoir Project Agreement Requirements**") in the name of the Authority and in accordance with the Authority's stated Mission as set forth in the fourth Recital of the Joint Powers Agreement. The Project Agreement Members are entering into this Agreement to satisfy the requirements of Article VI of the Joint Powers Agreement. **Exhibit B** defines the Project (herein called the "Project"), including principles to aid in decision-making, the scope of work, budget targets, Phase 1 milestone schedule, approved consultant scopes of work and estimated fees, and related items necessary to complete Phase 1.

D. All members of the Authority have also been given the opportunity to enter into this Project Agreement. The form of this Project Agreement was determined to be consistent with the Joint Powers Agreement and the Bylaws and approved by the Authority's Board of Directors on November 21, 2016.

E. The Authority and the Project Agreement Members acknowledge that one of the Authority's goals, in addition to providing environmental benefits, is to develop and make both a water supply and storage capacity available to water purveyors and landowners within the Sacramento River watershed, and in other areas of California, who are willing to purchase either or both a water supply and storage capacity from the Sites Reservoir Project, and that the Project Agreement Members should have a preference to the water supply or storage capacity.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

Section 1 Purpose:

The purpose of this Project Agreement is to permit the Project Agreement Members to undertake the Project in the name of the Authority consistent with the Joint Powers Agreement. The activities undertaken to carry out the purposes of this Project Agreement shall be those, and only those, authorized by the Reservoir Project Committee (the "**Committee**", defined in Section 2 of this Project Agreement) in accordance with this Project Agreement, the Joint Powers Agreement and its Bylaws. Without limiting in any way the scope of the activities that may be undertaken under this Project Agreement, such activities shall include funding Authority actions and obligations undertaken to carry out the directions of the Committee. Notwithstanding any other

provision of this Project Agreement, no activity undertaken pursuant to this Project Agreement shall conflict with the terms of the Joint Powers Agreement or the Bylaws, nor shall this Project Agreement be construed in any way as creating an entity that is separate and apart from the Authority.

Section 2 Reservoir Project Committee:

(a) Committee Membership. The business of the Project Agreement Members under this Project Agreement shall be conducted by a Committee consisting of one member appointed by each Project Agreement Member. Appointment of each member of the Committee shall be by action of the governing body of the Project Agreement Member appointing such member, and shall be effective upon the appointment date as communicated in writing to the Authority. Project Agreement Members may also appoint one or more alternate Committee members, which alternate(s) shall assume the duties of the Committee member in case of absence or unavailability of such member. Project Agreement Members may also appoint an alternate Committee member from a different Project Agreement Member for convenience in attending Committee meetings, who may cast votes for such Project Committee Members, provided that no person shall represent more than five other Project Committee Members and more than 20% of the weighted vote as provided in Subsection 2(g) at any given meeting. In order to serve as an alternate Committee member, a written evidence of such designation shall be filed with the Committee Secretary. Each member and alternate member shall serve on the Committee from the date of appointment by the governing body of the Project Agreement Member he/she represents and at the pleasure of such governing body.

(b) Officers. The Committee shall select from among its members a Chairperson, who shall annually act as presiding officer, and a Vice Chairperson, to serve in the absence of the Chairperson. There also shall be selected a Secretary, who may, but need not be, a member of the Committee and a Treasurer. All elected officers shall be elected and remain in office at the pleasure of the Committee, upon the affirmative vote of at least a majority of the total weighted vote as provided at Subsection 2(g);

(c) Treasurer. The Authority Treasurer shall serve as the Committee's Treasurer and shall act as the Committee's liaison to the Authority's General Manager and Authority Board on financial matters affecting the Committee. The Treasurer shall prepare and provide regular financial reports to the Committee as determined by the Committee.

(d) General Manager. The Authority's General Manager shall (1)

serve as the Project Director responsible for advancing the Sites Reservoir Project, (2) be a non-voting member of the Committee, (3) ensure coordination of outreach and engagement activities between the Authority and Committee, , and (4) convene, on an as needed basis, legal representatives from the Project Agreement Members and Authority Members to advise the General Manager on legal matters that will be reported to the Committee and Authority on a timely basis.

(e) Meetings. The Chairperson of the Committee or a majority of a quorum of the members of the Committee are authorized to call meetings of the Committee as necessary and appropriate to conduct its business under this Project Agreement. All such meetings shall be open to the public and subject to the requirements set forth in the Ralph M. Brown Act (Government Code Sections 54950 et seq.).

(f) Quorum. A majority of the Reservoir Project Committee members based on the weighted vote provided in Subsection 2(g) shall constitute a quorum of the Committee.

(g) Voting. Notwithstanding any provisions of the Bylaws that might be construed otherwise, for purposes of this Project Agreement, the voting rights of each Project Agreement Member shall be determined as follows:

(i) an equal number of voting shares for each Project Agreement Member participating in Class 1 and/or Class 2 as defined at **Exhibit A1**, that being for each Project Agreement Member, 1 divided by the total number of Project Agreement Members, multiplied by 50%; plus

(ii) an additional number of voting shares for each Project Agreement Member participating in Class 1 and/or Class 2, equal to its respective participating percentage described at Section 4 and defined at **Exhibit A1**, multiplied by 50%, using the version of Exhibit A in effect at the time the Committee votes.

The resulting weighted total of all voting shares shall equal 100. An Example of this weighted voting incorporating the formulas for determining participating percentages is attached at **Exhibit A2**.

(h) Decision-making Thresholds. In accordance with Section 5.7 of the Bylaws, for purposes of this Project Agreement, approval by the Committee for material and non-material changes shall be as follows: for actions other than Material Change Items, action of the Committee shall be taken upon the

affirmative vote of at least a majority of the total weighted vote as provided in Subsection 2(g); for Material Change Items, action shall be taken upon the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 2(g).

(i) Delegation of Authority/Powers and Limitations Thereon. Subject to the direction of the governing bodies of the Project Agreement Members, the Committee shall undertake all actions necessary for carrying out this Project Agreement, including but not limited to setting policy for the Project Agreement Members acting under this Project Agreement with respect to the Project; recommending actions to be undertaken in the name of the Authority under this Project Agreement; determining the basis for calculation of the participation percentages for each fiscal year, and the timing required for payments of obligations hereunder; authorizing expenditure of funds collected under this Project Agreement within the parameters of the approved work plan and budget; and such other actions as shall be reasonably necessary or convenient to carry out the purposes of this Project Agreement. This Section 2(i) is subject to any and all limitations set forth in the Joint Powers Agreement and Bylaws, including but not limited to, any action that constitutes a material change as defined at Section 12.3 of the Bylaws requiring the approval of both the Committee and the Authority Board, and actions specified in Section 10 of the Bylaws which remain exclusively with the Authority Board.

Section 3 Funding:

(a) Budget. The Committee shall, in cooperation with the Authority's Board, provide and approve both a fiscal year operating budget and reestablish the Phase 1 budget target, annually or more frequently as needed. On September 21, 2015, the Board approved both a fiscal year 2015 operating budget and Phase 1 budget target. Then, on November 11, 2015 the Board approved the fiscal year 2016 operating budget and reaffirmed the Phase 1 budget target for planned work by both the Authority and being delegated to the Committee under the original PHASE 1 RESERVOIR PROJECT AGREEMENT. An amended Phase 1 Work Plan, including annuals budgets, dated November 14, 2016, is attached at **Exhibit B**, along with the budget approval process and requirements. The Project Agreement Members shall contribute their respective pro-rata share of the budgeted sums in accordance with Section 4 of this Project Agreement.

(b) Fiscal Responsibilities. **Exhibit B** specifies the Authority's requirements regarding the fiscal responsibilities of the Committee.

(c) Allocation of Obligations. Should the Project Agreement Members acting collectively under this Project Agreement enter into any contract or other voluntary obligation, such contract or obligation shall be in the name of the Authority; provided, that all financial obligations thereunder shall be satisfied solely with funds provided under this Project Agreement and in accordance with Section 6.

(d) Allocation of Project Agreement Expenses. The Project Agreement Members agree that all Agreement expenses incurred by them and/or by the Authority under this Project Agreement are the costs of the Project Agreement Members and not of the Authority or the Members of the Authority that do not execute this Project Agreement, and shall be paid by the Project Agreement Members; provided, however, that this Section shall not preclude the Project Agreement Members from accepting voluntary contributions and/or Authority Board's pre-approval of in-kind services from other Authority Members, or Project Agreement Members, and applying such contributions to the purposes hereof. The Project Agreement Members further agree to pay that share of any Authority costs reasonably determined by the Authority's Board to have been incurred by the Authority to administer this Project Agreement. Before the Authority's costs of administering this Project Agreement become payable, the Authority will provide its calculation of such costs to the Committee, which will have the right to audit those costs and provide comments on the calculation to the Authority Board. The Authority Board shall consider the Committee's comments, if any, including the results of any such audit, in a public meeting before the Authority Board approves a final invoice for such costs.

Section 4 Participation Percentages:

Each Project Agreement Member shall pay that share of costs for activities undertaken pursuant to this Project Agreement, whether undertaken in the name of the Authority or otherwise, equal to such Project Agreement Member participation percentage as established in this Section 4. The initial participation percentages of the Project Agreement Member are set forth at the attached **Exhibit A1**. These initial participation percentages are for the purpose of establishing the Reservoir Project Agreement Members respective responsibilities for start-up costs and other amounts contained in the approved Fiscal year budget and Phase 1 budget target, which is defined as the "Reservoir Total" on **Exhibit B**. The participation percentages of each Project Agreement Member will be modified by the Committee from time to time as the result of the admission of a new Project Agreement Member to this Project Agreement or the withdrawal of a Project Agreement Member, and **Exhibit A1** shall be amended to reflect all such changes. Such amended **Exhibit A1** shall, upon approval by the Committee,

be attached hereto and upon attachment, shall supersede all prior versions of **Exhibit A1** without the requirement of further amendment of this Project Agreement.

Section 5. Future Development of the Sites Reservoir Project:

(a) The Project Agreement Members acknowledge that the Sites Reservoir Project is still in the conceptual stage and there are no assurances that the Reservoir will be constructed or that any water supplies will be developed as a result of this Project Agreement. Exhibit B includes a partial list of some of the risks and uncertainties that underlie the lack of assurances. The Project Agreement Members therefore recognize that they are not acquiring any interest in the Sites Reservoir Project other than their interest in the specific materials that will be produced by the Project defined on Exhibit B, and that they are not acquiring under this Project Agreement any interest in any future water supply or access to any other services from the Sites Reservoir Project except as provided hereunder.

(b) Without limiting the foregoing, any Project Agreement Member that elects to continue participating in the development, financing, and construction of the Sites Reservoir Project to the time when the Authority offers contracts for a water supply or other services, will be afforded a first right, commensurate with that Member's participation and financial contribution to the Sites Reservoir Project, to contract for a share of any water supply that is developed, and for storage capacity that may be available from the Sites Reservoir Project. In any successor Phase agreements, Project Agreement Members who are parties to this Project Agreement that submitted a proposal to participate before August 1, 2016, shall be granted rights to such share of water supply and storage capacity prior to those becoming parties after that date. The Authority and the Project Agreement Members will cooperate on the drafting of provisions in the water supply contract that will allow a Project Agreement Member or other eligible entity that commits to purchase a Sites Reservoir Project water supply to transfer water that the entity may not need from time to time on terms and conditions acceptable to the entity.

Section 6 Indemnity and Contribution:

(a) Each Project Agreement Member, including Authority Members acting in their capacity as Project Agreement Members and notwithstanding Section 5.9 of the Agreement, shall indemnify, defend and hold the Authority and other Project Agreement Members harmless from and against any liability, cause of action or damage (a "**Cost**") arising out of the performance of this Project

Agreement in excess of the amount of such Cost multiplied by each Project Agreement Member's participation percentage (defined in Section 4). Notwithstanding the foregoing, to the extent any such liability is caused by the negligent or intentional act or omission of a Project Agreement Member, such Project Agreement Member shall bear such liability.

(b) The Project Agreement Members shall indemnify, defend and hold the Authority and the members of the Authority that do not execute this Project Agreement harmless from and against any liabilities, costs or expenses of any kind arising as a result of the activities described in or undertaken pursuant to this Project Agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to activities undertaken under this Project Agreement shall be assets, rights, benefits, debts, liabilities and obligations solely of the Project Agreement Members in accordance with the terms hereof, and shall not be the assets, rights, benefits, debts, liabilities and obligations of the Authority or of those members of the Authority that have not executed this Project Agreement. Members of the Authority not electing to participate in the Project Agreement shall have no rights, benefits, debts, liabilities or obligations attributable to the Project Agreement.

Section 7 Term:

This Project Agreement shall take effect on the date it is executed by at least two members of the Authority and shall remain in full force and effect until this Project Agreement is amended, rescinded or terminated by the Reservoir Project Committee, or completion of Phase 1 as defined at **Exhibit B**. Notwithstanding the foregoing, upon the expiration of the Joint Powers Agreement, this Project Agreement shall terminate and all uncommitted funds contributed by each Project Agreement Member shall be returned in proportion to the contributions made by each.

Section 8 Withdrawal From Further Participation:

To withdraw from this Project Agreement, a Project Agreement Member shall give the Authority and other Project Agreement Members written notice of such withdrawal not less than 30 days prior to the withdrawal date. As of the withdrawal date, all rights of participation in this Project Agreement shall cease for the withdrawing Project Agreement Member. The financial obligation as prescribed in the Bylaws' Section 5.10 in effect on the withdrawal date, shall consist of the withdrawing Member's share of the following costs: (a) payment of its share of all non-contract costs incurred prior to the date of the written notice of withdrawal, and (b) those contract costs associated with funds approved

in either contract amendments or task orders that were approved prior to the date of the written notice of withdrawal for which the contractor's work extends beyond the withdrawal date. However, a withdrawing member shall have no liability for any change order or extensions of any contractor's work that the remaining Members agree to after the withdrawing Member provides written notice of withdrawal. Withdrawal from this Project Agreement shall not be considered a Material Change and shall not be subject to the Dispute Resolution process provided for in Section 12.3.5 of the Bylaws.

Section 9 Admission of New Project Agreement Members:

Additional Members of the Authority and Non-Member Participating Parties may become Project Agreement Members upon the affirmative vote of at least 75% of the total weighted vote as provided at Subsection 2(g) of the then-current Project Agreement Members and the affirmative vote of at least 75% of the total number of Directors of the Authority, and upon such conditions as are fixed by such Project Agreement Members.

Section 10 Amendments:

This Project Agreement may be amended only by a writing executed by at least 75% of the total weighted vote as provided in Subsection 2(g) of the then-current Reservoir Project Committee members.

Section 11 Assignment; Binding on Successors:

Except as otherwise provided in this Project Agreement, the rights and duties of the Project Agreement Members may not be assigned or delegated without the written consent of the other Project Agreement Members and the Authority. Any attempt to assign or delegate such rights or duties in contravention of this Project Agreement shall be null and void. Project Agreement Members may assign and delegate their rights and duties under this Project Agreement to other Project Agreement Members, and they may assign, sell, trade, or exchange all or a fraction of the potential benefits (e.g. acre-feet of water supply, megawatt-hours of power) they expect to receive through their participation in this Project Agreement consistent with the Re-balancing process and provisions set forth in Section 14.3.2 of the Bylaws. Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Authority then in effect. This Project Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Authority and the Project Agreement Members.

Section 12 Counterparts:

This Project Agreement may be executed by the Authority and the Project Agreement Members in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.

Section 13 Severability:

If one or more clauses, sentences, paragraphs or provisions of this Project Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of the Project Agreement shall not be affected thereby.

Section 14 Notices:

Notices authorized or required to be given under this Project Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the addresses set forth **Exhibit C ("Notifications")**, or to such other address as a Project Agreement Member may provide to the Authority and other Project Agreement Members from time to time.

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

Dated: _____ SITES PROJECT AUTHORITY BOARD
REPRESENTATIVE

By: _____

Dated: _____
(Authority & Project Agreement Member)

By: _____