

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT BETWEEN
THE UNITED STATES AND
THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
FOR THE MANAGEMENT OF THE EXPANDED SAN LUIS RESERVOIR
AND COST SHARE OF DESIGN, CONSTRUCTION AND OTHER ANCILLARY
CHARGES
ASSOCIATED WITH RAISING OF THE B.F. SISK DAM
AND INCREASED STORAGE CAPACITY
OF THE FEDERALLY ADMINSTERED SAN LUIS RESERVOIR

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- Exhibit B: Spend Plan
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1 THIS AGREEMENT, made this ____ day of _____, 2024, pursuant
2 to the Reclamation Act of 1902 as amended (32 Stat. 388; 43 U.S.C. Part 391); the Reclamation
3 Project Act of 1939, as amended (53 Stat. 1187; 43 U.S.C. Part 485); the San Luis Act of 1960,
4 as amended (Public Law 86-488, 74 Stat. 156); the Reclamation Safety of Dams Act of 1978
5 (Public Law 95-578, 92 Stat. 2471); the Reclamation Reform Act of 1982, as amended (Public
6 Law 97-293, 96 Stat. 1261); the Central Valley Project Improvement Act of 1992, as amended
7 (Public Law 102-575, 106 Stat. 4706); and the Water Infrastructure Improvement for the Nation
8 Act of 2016 (Public Law 114-322, 130 Stat. 1865); made between the UNITED STATES
9 BUREAU OF RECLAMATION hereinafter the United States or Reclamation, and represented
10 by the officer executing this Agreement, hereinafter referred to as the Contracting Officer, and

11 the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the
12 Authority, individually referred to as “Party” and collectively referred to as “Parties”.

13 **EXPLANATORY RECITALS**

14 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
15 Project for diversion, storage, carriage, and distribution of waters of the Sacramento River, the
16 American River, the Trinity River, and the San Joaquin River and their tributaries for irrigation
17 and other beneficial uses to serve Project purposes; and

18 [2nd] WHEREAS, the United States was authorized to construct the San Luis Unit of
19 the Project, a joint use project, shared with the State of California and administered through the
20 Department of Water Resources (DWR), the operations of which are coordinated between
21 Reclamation and DWR consistent with the Agreement Between the United States of America
22 and The Department of Water Resources of the State of California for the Operation of the San
23 Luis Unit and all supplements and amendments, Contract No. 14-06-200-9755 ; and

24 [3rd] WHEREAS, the United States holds title, and will continue to hold title to the
25 B.F. Sisk Dam and San Luis Reservoir and authorized features of the San Luis Unit as provided
26 for in the San Luis Act of 1960; and

27 [4th] WHEREAS, consistent with the San Luis Act of 1960, Reclamation is responsible
28 for 55% and DWR is responsible for the 45% of the costs of operation, maintenance, and
29 replacement of B.F. Sisk Dam and San Luis Reservoir; and

30 [5th] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary
31 maintenance work to B.F. Sisk Dam to improve the safety of the continued operation and
32 maintenance of aforementioned dam; and

33 [6th] WHEREAS, consistent with Reclamation’s Directives and Standards at CMP 09-
34 02 and FAC 06-05, Reclamation is authorized to assess the feasibility of increasing the storage
35 capacity of San Luis Reservoir to add additional storage and to take advantage of a potential
36 savings in project construction by leveraging the Safety of Dams (SOD) improvements with a
37 feasible storage project; and

38 [7th] WHEREAS, in addition to the construction to address safety of dam work, in
39 accordance with the Reclamation Safety of Dams Act of 1978 (Public Law 95-578, 92 Stat.
40 2471) and the implementing regulations at 43 U.S.C. § 509 b to develop additional project
41 benefits, in December 2020, the Expansion Project was determined to be feasible which would
42 raise B.F. Sisk Dam an additional ten feet which will provide an additional estimated 130
43 thousand acre feet (TAF) of storage in San Luis Reservoir ; and

44 [8th] WHEREAS, following the finding that raising B.F. Sisk Dam in coordination
45 with construction of the SOD improvements would be feasible, in accordance with §4007 of the
46 Water Infrastructure and Improvement for the National Act (WIIN) (Public Law 114-322), on
47 October 20, 2023, Congress authorized construction and associated funding for the B.F. Sisk
48 Dam Raise and Reservoir Expansion Project; and

49 [9th] WHEREAS, Reclamation signed a Record of Decision for the Environmental
50 Impact Statement/Report (EIS/R), entitled B.F. Sisk Dam Raise and Reservoir Expansion
51 Project, selecting the Dam Raise Alternative which would raise B.F. Sisk Dam an additional ten
52 feet higher than the SOD improvements and share in the storage and cost of the Expanded
53 Reservoir, 70% to the non-federal investors, represented by the Authority, , and 30% to
54 Reclamation for authorized purposes of the Central Valley Project (CVP); and

55 [10th] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority
56 agree to enter into a Cost Share Agreement for up to 50% of the costs of the Expansion Project
57 including, but not limited to, planning, design, and construction, and as further defined in this
58 Agreement; and

59 [11th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
60 States, and the Authority representing a subset of Investors who will collectively share in the
61 costs of the Expansion Project, desire to use the increased storage capacity created by the
62 Expansion Project and as defined in this Agreement in a such a manner as may be mutually
63 agreeable to the Parties hereto; and

64 [12th] WHEREAS, this WIIN 4007 Agreement, for the management of the expanded
65 San Luis Reservoir and cost share of design, construction, and other ancillary charges associated
66 with raising of the B. F. Sisk Dam and increased storage capacity of the federally administered
67 San Luis Reservoir, is the base agreement, there may be additional agreements that are required
68 to facilitate design and construction and operations, those agreements may be exhibits to this
69 agreement and may include, but are not limited to, a Contributed Funds Agreement, an O&M
70 Agreement, a Repayment Contract, a Spend Plan, and a Coordination Agreement; and

71 [13th] WHEREAS, other agreements and/or contracts necessary for commencing
72 construction and operation of the Expanded Reservoir may be necessary and may be
73 incorporated by amendment of this Agreement, and may include, but are not limited to, a
74 contributed funds agreement providing for the contribution of funds from Federal cost share
75 partners (§4007(b)(3)(b)); and a repayment contract providing for repayment of reimbursable
76 obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate; and which may require further

77 delegation of authority from the Commissioner of Reclamation to negotiate and make a part of
78 this Agreement; and

79 [14th] WHEREAS, the Parties desire to manage the additional capacity associated with
80 the expansion of San Luis Reservoir and share in the cost of design and construction and other
81 associated costs pertaining to the Expanded Reservoir consistent with the terms and conditions
82 contained herein.

83 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
84 contained, the Parties hereto agree as follows:

85 **DEFINITIONS**

86 1. When used herein unless otherwise distinctly expressed, or manifestly
87 incompatible with the intent of the Parties as expressed in this Agreement, the term:

88 (a) “Acquired Project Water” shall mean CVP Water acquired by an Investor,
89 from another CVP Water Service/Repayment Contractor, Sacramento River Settlement
90 Contractor, or San Joaquin River Exchange Contractor.

91 (b) “Calendar Year” shall mean the period January 1 through December 31,
92 both dates inclusive.

93 (c) “Contracting Officer” shall mean the Secretary of the Interior's duly
94 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
95 or regulation.

96 (d) “Contributed Funds Agreement” shall mean the agreement by which the
97 Authority and Investors contribute to the cost of the Expansion Project, entered into pursuant to

98 the Sundry Civil Appropriations Act of March 4, 1921 (Pub. L. 66-389; 41 Stat. 1404; 43 USC
99 395).

100 (e) “Coordination Agreement” shall mean the agreement provided for in
101 subarticle 4(f) of this Agreement.

102 (f) “Expanded Reservoir” shall mean the cumulative volume of storage
103 availability in the Federal and non-Federal portion of the expanded San Luis Reservoir resulting
104 from the Expansion Project.

105 (g) “Expansion Project” shall mean the B.F. Sisk Dam Raise and Reservoir
106 Expansion Project; and consistent with the Record of Decision as described in the recitals dated
107 October 20, 2023.

108 (h) “Historic Reservoir” shall mean storage volume of 966 TAF in San Luis
109 Reservoir.

110 (i) “Investors” shall mean those entities and/or organizations that have agreed
111 to share in the costs of the Expansion Project and are represented by San Luis & Delta-Mendota
112 Water Authority in this Agreement.

113 (j) “Municipal and Industrial Water Shortage Policy” or “M&I Water
114 Shortage Policy” shall mean the policy intended to provide clear and objective guidelines on the
115 water supplies available from the CVP during a Condition of Shortage, as that term is defined in
116 the Water Service/Repayment Contracts.

117 (k) “Non-Project Water” shall mean all water acquired by or available to the
118 Contractor(s) that have not been appropriated or acquired by the United States and as further
119 described herein.

120 (l) “Operation and Maintenance Agreement” or “O&M Agreement” shall
121 mean the agreement between the United States and the Authority and the Investors providing for
122 the operation of the Expansion Project.

123 (m) “Parties” shall mean the United States or Reclamation and the San Luis &
124 Delta-Mendota Water Authority, representing Investors.

125 (n) “Project Water” shall mean water developed by and diverted under the
126 authority of the Central Valley Project subject to the water rights applications and permits
127 provided by the State of California Water Resources Control Board and relevant contracts
128 otherwise cited herein.

129 (o) “Repayment Contract” shall mean a new contract resulting from the
130 Expansion Project the purpose of which is to recover the reimbursable costs from the Investors,
131 entered into pursuant to Section 9(c)(1) and/or 9(d) of the Reclamation Project Act of 1939, as
132 amended.

133 (p) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
134 Reservoir.

135 (q) “San Luis Rescheduling Guidelines” shall mean the Rescheduling
136 Guidelines for the Federal Share of Storage in San Luis Reservoir, Central Valley Project,
137 California Great Basin Region, dated March 12, 2021, as may be superseded.

138 (r) “Spend Plan” shall mean the plan provided for in subarticle 3(e) of this
139 Agreement.

140 (s) “Substantial Completion” shall have the same meaning as defined in FAC
141 01-05.

142 (t) “Water Master/Manager” shall mean the individual provided for in
143 subarticle 4(b)(3)(i) of this Agreement.

144 (u) “Year” shall mean the period from and including March 1 of each
145 Calendar Year through the last day of February of the following Calendar Year.

146 **TERM OF AGREEMENT**

147 2. (a) This Agreement is effective on the date hereinabove written; and will
148 remain in full force during the duration of the useful life of the Project or until terminated.

149 (b) The Contracting Officer may terminate this Agreement at any time before
150 the expiration of its term whenever the Contracting Officer determines that the Authority is in
151 substantial violation of the Agreement as provided in this Article 2(b) or otherwise in violation
152 of federal law or Reclamation Policy; provided, that prior to the effective date of any such
153 termination, the Contracting Officer shall first notify the Authority in writing of, the specific
154 purported deficiencies of the Authority in carrying out the terms and conditions of this
155 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as
156 expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If
157 after the designated representative of the Authority has met with the Contracting Officer or his or
158 her designated representative and attempt in good faith and with the use of best efforts to resolve
159 any dispute arising from the purported deficiency an agreement is not reached, the Contracting

160 Officer may issue a notice of proposed termination, which includes the specific deficiencies of
161 the Authority's performance under this Agreement. The Authority shall have at least ninety (90)
162 days from receipt of the written notice of proposed termination to correct all deficiencies referred
163 to in said written notice; Provided, That in the event of a condition which threatens the safety or
164 integrity of the Expansion Project, the Contracting Officer may specify a shorter correction
165 period which the Contracting Officer determines to be appropriate under the circumstances. In
166 the event the Authority does not correct all deficiencies referred to in said written notice within
167 the applicable period, the Contracting Officer may thereafter terminate this Agreement upon
168 thirty (30) days prior written notice to the Authority. Any termination pursuant to this Article
169 shall be subject to the rights and obligations of the Parties as more specifically set forth in this
170 Agreement.

171 (c) The Authority may at any time, upon giving twelve (12) months written
172 notice, terminate this Agreement; Provided, That such termination shall not relieve the Authority
173 of any of its duties, liabilities or obligations accruing from the effective date of this Agreement to
174 the effective date of such termination, except insofar as the Authority lacks funding to perform
175 such obligations.

176 (d) The United States and the Authority jointly shall review this Agreement,
177 which review shall be performed at least every five (5) years. A more frequent review will be
178 established if determined to be appropriate by the Contracting Officer. The Parties shall compare
179 the relative success which each party has had in meeting its objectives, including, but not limited
180 to, the Contributed Funds Agreement, an O&M Agreement, a Repayment Contract, a Spend
181 Plan, and a Coordination Agreement, which agreements will be exhibits to this Agreement. From
182 time to time, the exhibits to this Agreement may require modification and will be mutually

183 agreed upon, which may require amendment to this Agreement. From time to time, the exhibits
184 associated with this Agreement will require modification and will be mutually agreed upon
185 without amendment to this Agreement.

186 **COST SHARE**

187 3. As provided for in WIIN §4007(b)(2), Reclamation may invest up to 50% of the
188 Expansion Project costs so long as the benefits from the Expansion Project are commensurate
189 with the federal investment.

190 (a) Reclamation has the authority to share in the costs up to 50% of the
191 Expansion Project; however, Reclamation and the Authority have agreed to an initial 70%
192 Investor share of the Expansion Project storage and a 30% Federal share of the Expansion
193 Project storage.

194 (1) Upon the determination of “Substantial Completion” of
195 construction of the Expansion Project, Reclamation and the Authority will determine the final
196 costs of the Expansion Project and will determine final storage benefits.

197 (2) Reclamation shall receive benefits commensurate to its percentage
198 of investment. It is possible for either of the Parties to receive greater or lesser benefits upon
199 agreement of final accounting.

200 (b) Eligible Expansion Project costs are as follows and will be shared in
201 accordance with Article 3(a)(1) of this Agreement:

202 (1) The Parties have reviewed the Expansion Project costs incurred by
203 the Authority and the Investors and Reclamation prior to the effective date of this Agreement.

204 The Parties acknowledge and agree that the Investors have incurred costs totaling \$_____

205 and Reclamation has incurred costs totaling \$ _____, which allowable amounts will be credited
206 to each Party's cost share obligation under this Agreement.

207 (2) Planning Costs: in an effort to reach a finding that the Expansion
208 Project is feasible, certain planning level investigations were necessary and may continue to be
209 necessary prior to commencement of construction. Such planning investigations will be
210 consistent with Reclamation's Directives and Standards in accordance with CMP 09-02.

211 (3) Environmental Mitigation and Compliance Costs: Either Party may
212 fund environmental mitigation and compliance activities associated with this Agreement. These
213 activities may include, but are not limited to, contracts for technical assistance in environmental
214 mitigation, funding of environmental mitigation commitments, and any actions to ensure
215 consistency with the State California Environmental Quality Act (CEQA) or Federal National
216 Environmental Policy Act (NEPA) laws and regulations.

217 (4) Cultural Costs: Either Party may fund cultural studies,
218 investigations, and mitigation needs consistent with this Agreement. Reclamation will be
219 responsible for all necessary consultations with state offices, Indian tribes, and interested parties
220 pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.
221 Reclamation will be responsible for compliance and coordination with the Native American
222 Graves Protection and Repatriation Act of 1990.

223 (5) Permitting Costs: Additional permitting actions prior to
224 construction of the Expansion Project and prior to declaring the Expansion Project "Substantially
225 Complete" may be required. Reclamation and the Authority will jointly determine, as
226 appropriate, the appropriate Party to obtain any necessary permit(s). (6) Administrative Costs:

227 Reclamation will reserve sufficient funding from Federal appropriations to cover its
228 administrative and management costs associated with the Expansion Project. This amount will be
229 considered part of the overall Federal contribution. Reclamation will provide an estimate of the
230 administrative costs for this Expansion Project which will be reviewed with the Authority. The
231 Authority will reserve sufficient funding to pay for its administrative costs for the non-Federal
232 share of the Expansion Project. These costs will be considered contributions to the non-Federal
233 share of the Expansion Project and reported pursuant to subarticle 3(f). Administrative costs
234 include, unless otherwise defined by contracts: project management, construction management,
235 accounting and administrative management, legal support and review, travel, general meetings
236 related to the Expansion Project, contract/agreement technical meetings and negotiations, and
237 other supportive services and activities necessary for the construction and operation of the
238 Expansion Project prior to the determination of Substantial Completion.

239 (7) Design Costs: Either party may pay for part or all of various design
240 needs for the Expansion Project. Reclamation will be responsible for design of the embankment
241 of the San Luis Reservoir but there may be instances, or ability, to contribute funds that will
242 count towards the cost share. There may be the need for modifications during construction that
243 may require further design work. These costs will be shared in accordance with Article 3(a)(1).

244 (8) Construction Costs: Reclamation will serve as the procurement agency for, and will
245 manage, the primary construction contract with respect to the embankment. All costs for this
246 contract will be funded directly by Reclamation or with funds contributed to Reclamation by the
247 Authority or the Investors.

248 (9) Design and Construction Costs: Includes design and construction
249 of associated facilities affected or involved with the Expansion Project including, but not limited

250 to, recreation facilities, power improvements to existing facilities, improvements to pumps,
251 transportation, and other various components of the Expansion Project.

252 (c) Reclamation and the Authority have proposed using their collective funds
253 to fund parts of the Expansion Project. A contributed funds agreement may be necessary to help
254 facilitate transfer of funds to Reclamation from the Authority. Such an agreement, if needed, will
255 be an exhibit to this Agreement. Any funds contributed to Reclamation for the Expansion Project
256 will be considered part of the cost of this Expansion Project and shared in accordance with
257 Article 3(a)(1).

258 (d) There may be times when Reclamation provides funds to the Authority.
259 These funds will be provided through a financial assistance agreement as provided for in
260 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be
261 considered part of the cost of this Expansion Project and shared in accordance with Article
262 3(a)(1).

263 (e) Within sixty (60) days of the execution of this Agreement, if not before,
264 Reclamation and the Authority will develop a Spend Plan containing mutually agreeable terms to
265 track costs and account for funds expended. The Spend Plan will be an exhibit to this Agreement.

266 (f) Reclamation and the Authority will establish, at a minimum, quarterly
267 check-ins of the costs expended for this Expansion Project and discuss items, including but not
268 limited to, costs, funding, and any additional financial agreements.

269 (g) Repayment: As currently formulated, Reclamation does not anticipate the
270 need for a repayment contract for repayment of costs associated with the design and construction
271 of the Expansion Project. Reclamation and the Authority will, at the quarterly check-ins

272 described in sub-article (f) above, review the need for a Repayment Contract. If a repayment
273 contract is necessary, Reclamation will seek delegated authority from the Commissioner to
274 negotiate and execute said contract which will be an exhibit to this Agreement. The Parties will
275 closely monitor the potential for reimbursable costs and the need for a repayment contract and
276 conduct any necessary financial analysis, in accordance with PEC 11-01, prior to executing any
277 repayment contracts.

278 (h) A final accounting of Expansion Project benefits will be necessary to
279 determine final benefits of the Expansion Project and the allocation to Reclamation and the
280 Investor. At the time of final accounting, Reclamation, in coordination with the Expansion
281 Project beneficiaries, will assess the Expansion Project costs and make a determination of which
282 Expansion Project costs are reimbursable and which Expansion Project costs are non-
283 reimbursable.

284 **MANAGEMENT PRINCIPLES OF EXPANDED RESERVOIR**

285 4. In accordance with Section 4007(e) of the WIIN Act, “*Subject to compliance with*
286 *State water rights laws, the right to use capacity of a federally owned storage project... Shall be*
287 *allocated in such a manner as may be mutually agreed to by the Secretary of the Interior and*
288 *each party to the agreement.* The Parties agree that this Agreement, as may be amended as the
289 need arises, provides for the mutually agreeable use of the Expanded Reservoir to the extent
290 consistent with Federal Law.

291 (a) Authority

292 (1) San Luis Act of 1960 (Public Law 86 – 488, 74 Stat. 156)

293 authorized the Secretary of the Interior to construct, operate, and maintain an afterbay, forebay,

294 conveyance facilities, and dam and Reservoir for the joint use by the State of California and the
295 United States. As provided in Section 2 of the Act, the Secretary was authorized to enter into an
296 agreement with the State of California to provide for the coordinated operation of the San Luis
297 Unit which resulted in a 1961 Joint Coordination Agreement and subsequent amendatory and
298 supplemental agreements of 1972 and 1997. Nothing in this Agreement shall alter or change the
299 Joint coordination Agreements between the United States and the State of California except as is
300 deemed necessary by Reclamation in consultation with the State of California to accommodate
301 the Expansion Project and account for any changed operation or maintenance of the Expanded
302 Reservoir and raised dam.

303 (i) The Authority and the Investors shall neither execute nor
304 be a party to any agreement with the State of California for the operation and maintenance of the
305 B.F. Sisk Dam and the Historic Reservoir or the Expanded Reservoir.

306 (ii) Reclamation and the Authority will draft and finalize a
307 coordinated O&M Agreement for the Expansion Project, including plans to cover the costs for
308 the operations and maintenance resulting from the Expansion Project, prior to the first entry of
309 any water subject to this Agreement into any Central Valley Project facilities. All future
310 operation and maintenance costs associated with the Expansion Project will be commensurate to
311 each Party's final investment in accordance with Article 3(a)(1) of this Agreement.

312 (b) Expanded Project Storage

313 (1) Combined federal and state storage in the Historic Reservoir is
314 2.028-million-acre feet and is shared with the State of California on a proportionate basis of
315 52.38% State share and 47.62% federal share.

316 (i) The Parties agree, subject to the terms of this Agreement,
317 that no Project Water developed in the contemporary water year will be used to fill the Expanded
318 Reservoir.

319 (ii) The Parties agree that Reclamation and the California
320 Department of Water Resources have the sole discretion of the operations of the Reservoir and
321 any water pumped into the Historic Reservoir and/or the Expanded Reservoir, consistent with
322 existing laws, agreements, and obligations with the State of California.

323 (2) Federal Share: the management of any water in the federal share of
324 the Expanded Reservoir is at the sole discretion of Reclamation and will be managed in such a
325 way to be consistent with State and Federal law and existing and future agreements, guidelines,
326 and programs for Federal benefits.

327 (i) It is anticipated that the Federal share of costs associated
328 with the Expansion Project will be used for purposes deemed to be non-reimbursable and
329 ancillary water supply benefits, therefore the Federal share of costs associated with the
330 Expansion Project will be non-reimbursable.

331 (ii) If reimbursable benefits are identified upon the final
332 allocation of costs, Reclamation will establish appropriate recovery of said reimbursable costs
333 consistent with Reclamation law and policy.

334 (3) Investment share: The investment share of the Expanded Reservoir
335 will be commensurate to the final allocated costs for the Expansion Project. The Parties mutually
336 agree to the use of the Expanded Reservoir in a way that mutually benefits the Parties and is
337 commensurate to the final allocated costs.

338 (i) Water Master - The Parties agree that a Water Master or
339 Water Manager will be provided and paid for by the Authority who will account for the water in
340 the Investor share of the Expanded Reservoir and ensure operations are coordinated so that
341 operations do not adversely impact the CVP/SWP.

342 (a) The Water Master/Manager will:

343 (i) Coordinate and communicate with
344 Reclamation's Central Valley Project Operation Office and the South-Central California Area
345 Office regarding water in the Expanded Reservoir.

346 (ii) Manage the water supply of the Investors
347 and coordinate the accounting of water held in the Investor share of the Expanded Reservoir.

348 (iii) As between the Investors, enforce the rules
349 of the Investor share of the Expanded Reservoir.

350 (iv) Ensure the priority of CVP and State Water
351 Project water in the Historic Reservoir and through the conveyance facilities remains first in
352 right.

353 (b) The Water Master/Manager will not:

354 (i) Manage or direct water deliveries or storage
355 of the federal share of the Expanded Reservoir or the Federal or State portion of the Historic
356 Reservoir.

357 (ii) Control the timing and delivery of water into
358 and out of the Investor share of the Expanded Reservoir.

359 (ii) The following water types may be stored in the Investor
360 share of the Expanded Reservoir subject to the terms of this Agreement:

361 (c) Non-Project Water - Non-CVP Water includes
362 water acquired from contracts with the State of California or water acquired through purchase or
363 transfer from a non-federal contractor or water purveyor which water is verifiable and available
364 consistent with State and Federal law.

365 (i) With the exception of State Water Project
366 water that may already exist in San Luis Reservoir and is conveyed through the State Water
367 Project or under agreement with Reclamation, all non-Project water is subject to a Warren Act
368 Contract for the use of excess capacity in Federal facilities that may need to be utilized in the
369 conveyance of Non-Project Water to the San Luis Reservoir.

370 (1) Non-Project Water stored in the
371 Investor share of the Expanded Reservoir will not be subject to a Warren Act Contract.

372 (2) Non-Project Water stored in the
373 Historic Reservoir will continue to require a Warren Act Contract, including any water that is
374 stored in the Investor share of the Expanded Reservoir that may be moved into and accounted for
375 in the Historic Reservoir.

376 (ii) For the purpose of this Agreement and
377 consistent with the San Luis Rescheduling Guidelines, unless otherwise amended, San Joaquin
378 River Restoration water recaptured consistent with permits issued by the State Water Resources
379 Control Board will be treated as having the same priority as Non-Project Water and may be

380 storable in the Investor share of the Expanded Reservoir if acquired by an Investor and agreed to
381 by an Investor and Reclamation.

382 (iii) The Parties agree that the Non-CVP Water,
383 as defined in subarticle 3(c) of this Agreement, will not be subject to the spill priorities as
384 provided in the San Luis Rescheduling Guidelines, and Reclamation will not use this water to
385 meet CVP purposes without mutually agreed to water or monetary compensation, subject to
386 appropriations, or a combination thereof, to the Investors, prior to its use.

387 (iv) M&I Shortage - Non-Project Water in the
388 investor portion of the Expanded Reservoir will not be subject to nor accounted against an
389 Investor's available water, as contemplated in the M&I Water Shortage Policy, as may be
390 amended or superseded, to meet minimum public health and safety needs.

391 (b) Acquired CVP Water is water acquired via
392 exchange or transfer with a Project Water Service, Repayment, Settlement, or Exchange
393 contractor, where the water was developed, conveyed, and/or stored by or for the CVP for
394 beneficial uses consistent with the permits issued by the California State Water Resources
395 Control Board for the benefit of the CVP; and which water is made available consistent with the
396 transfer provisions under Section 3405(a) of the Central Valley Project Improvement Act, as
397 amended (Public Law 102-575, 106 Stat. 4706).

398 (i) A CVP contractor who has invested
399 in the Expansion Project or under separate agreement with an Investor in the Project who has
400 approved unused rescheduled Project Water in the Historic Reservoir may move their remaining

401 unused amount into the Investor share of the Expanded Reservoir, Provided, that, by no means
402 will this action expand the Investor share of the Expanded Reservoir

403 (ii) The Parties agree that the Acquired Project
404 Water as defined by this Agreement will not be subject to the spill priorities provided in the San
405 Luis Rescheduling Guidelines; and

406 (1) Reclamation may use this water to
407 meet CVP purposes only after all available federal supplies in the Historic Reservoir have been
408 used by Reclamation to meet CVP needs; and

409 (2) Reclamation may utilize this
410 Acquired CVP Water in coordination and consultation with the Authority and will repay the
411 water in the following Year on a one-to-one basis unless specifically identified to meet Public
412 Health and Safety water supply needs in the subsequent Year.

413 (iii) Acquired Project Water will be subject to
414 the M&I Water Shortage Policy.

415 (c) Project Water

416 (i) Following the filling of the Historic
417 Reservoir, Reclamation will divert Project Water, on the proportional basis of the final
418 investment, into the Federal share of the Expanded Reservoir, until the Federal share of the
419 Expanded Reservoir is full.

420 (ii) Any water in the Investor share of the
421 Expanded Reservoir will not be displaced by filling of the Historic Reservoir.

422 (iii) Any Non-CVP or Acquired CVP Water in
423 the Historic Reservoir will be subject to spill consistent with existing operations, policy, and
424 guidelines.

425 (iv) Any Water, as defined by this sub-article,
426 that remains in the Investor share of the Expanded Reservoir may be used by Reclamation at any
427 time if needed to meet CVP obligations or purposes.

428 (c) Losses - All water in the both the Historic and Expanded Reservoirs will
429 be subject to the existing water loss policy, as may be amended or superseded. In coordination
430 with the SCCAO, the Water Master/Manager will account for these losses in the accounting for
431 the Investor share.

432 (d) Points of Delivery

433 (i) Any Project Water, as defined by this Agreement, will be delivered
434 at the point(s) of diversion as specified in the Investor's Project Water Service/Repayment
435 Contract.

436 (ii) Any Acquired Project Water or Non-Project Water will be
437 considered delivered to the Investor's share of the Expanded Reservoir and will be accounted for
438 consistent with all applicable State and Federal laws, contracts, and policy.

439 (e) Operation and Maintenance Costs of the San Luis Reservoir – as a result
440 of the Expanded Reservoir, Reclamation may have an increased share of the cost of the operation
441 and maintenance of the B.F. Sisk Dam and San Luis Reservoir. The Parties agree that costs will
442 be paid consistent with existing laws, agreements, and policy. Further, the Authority agrees it
443 will specifically pay for the cost associated with the Investor share of the Expanded Reservoir.

444 (f) Coordination – Prior to the operation of the Expanded Reservoir,
445 Reclamation and the Authority will develop a Coordination Agreement which will be an Exhibit
446 to this Agreement. The Coordination Agreement will, among other things:

447 (i) Define the frequency of coordination between the Parties.

448 (ii) Establish a Reclamation approved accounting methodology and
449 system of accounting for water in the investor share of the Expanded Reservoir; and

450 (iii) Provide for a dispute resolution process.

451 **EXISTING CONTRACTS**

452 5. Nothing in this Agreement, in any way, alters, changes, or amends the Investors’
453 existing Water Service/Repayment Contracts with the United States.

454 **DISPUTE RESOLUTION**

455 6. Should any dispute arise concerning storage of water by the Authority and the
456 Investors in the Expanded Reservoir, between the authority, and/or the Investors, which the
457 Authority and/or the Investors concludes cannot be resolved through negotiations with the other
458 party(ies) to the dispute, the Authority and/or the Investors shall provide its final position with
459 respect to such dispute to the other party(ies) thereto in writing and to the Contracting Officer
460 requesting a determination of the dispute. Within sixty (60) days after such final position is
461 provided, or such other reasonable date as may be agreed upon by the Authority and/or the
462 Investors and the Contracting Officer, the Contracting Officer will issue a written determination
463 regarding the dispute. The Contracting Officer's determination shall be accepted by the
464 Authority and/or the Investors as final and conclusive and the Authority and the Investors shall

465 promptly comply with said decision until the same is stayed, reversed, or modified by a decision
466 of a court of competent jurisdiction.

467 **NOTICES**

468 7. Any notice, demand, or request authorized or required by this Agreement shall be
469 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
470 delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800
471 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage
472 prepaid, or delivered to the San Luis and Delta-Mendota Water Authority, 842 6th Street, Los
473 Banos, CA 93635.
474

475 **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

476 8. The expenditure or advance of any money or the performance of any obligation of
477 the United States under this Agreement shall be contingent upon appropriation or allotment of
478 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
479 obligations under this Agreement. No liability shall accrue to the United States in case funds are
480 not appropriated or allotted.

481 **OFFICIALS NOT TO BENEFIT**

482 9. No Member of or Delegate to the Congress, Resident Commissioner, or official of
483 the Contractor shall benefit from this Agreement other than as a water user or landowner in the
484 same manner as other water users or landowners.

485 **ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED**

486 10. The provisions of this Agreement shall apply to and bind the successors and
487 assigns of the parties hereto, but no assignment or transfer of this Agreement or any right or
488 interest therein by either party shall be valid until approved in writing by the other party.

489 **BOOKS, RECORDS, AND REPORTS**

490 11. The Contractor shall establish and maintain accounts and other books and records
491 pertaining to administration of the terms and conditions of this Agreement, including the
492 Contractor's financial transactions; water supply data; project operation, maintenance, and
493 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
494 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
495 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
496 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
497 regulations, each party to this Agreement shall have the right during office hours to examine and
498 make copies of the other party's books and records relating to matters covered by this
499 Agreement.

500

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

501 12. The parties agree that the delivery of irrigation water or use of Federal facilities
502 pursuant to this Agreement is subject to Federal reclamation law, including but not limited to the
503 Reclamation Reform Act of 1982 (43 U.S.C. 390aa, et seq.), as amended and supplemented, and
504 the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation
505 law.

506

PROTECTION OF WATER AND AIR QUALITY

507 13. (a) The Contractor, without expense to the United States, will care for,
508 operate, and maintain transferred works in a manner that preserves the quality of the water at the
509 highest feasible level as determined by the Contracting Officer.

510 (b) The United States will care for, operate, and maintain reserved works in a
511 manner that preserves the quality of the water at the highest feasible level as determined by the
512 Contracting Officer. The United States does not warrant the quality of the water delivered to the
513 Contractor and is under no obligation to furnish or construct water treatment facilities to
514 maintain or improve the quality of water delivered to the Contractor.

515 (c) The Contractor will comply with all applicable water and air pollution
516 laws and regulations of the United States and the State of California; and will obtain all required
517 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
518 delivery of water by the Contractor; and will be responsible for compliance with all Federal,
519 State, and local water quality standards applicable to surface and subsurface drainage and/or
520 discharges generated through the use of Federal or Contractor facilities or project water provided
521 by the Contractor within its Project Water Service Area.

522 (d) This article will not affect or alter any legal obligations of the Secretary to
523 provide drainage or other discharge services.

524

WATER CONSERVATION

525 14. Prior to the delivery of water provided from or conveyed through federally
526 constructed or federally financed facilities pursuant to this Agreement, the Contractor shall
527 develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform
528 Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

529

EQUAL EMPLOYMENT OPPORTUNITY

530 15. The following language is required by Executive Order No. 11246 of September
531 24, 1965, in all government contracts unless and until it is superseded or amended.

532 During the performance of this Agreement, the Contractor agrees as follows:

533 (a) The Contractor will not discriminate against any employee or applicant for
534 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
535 origin. The Contractor will take affirmative action to ensure that applicants are employed, and

536 that employees are treated during employment, without regard to their race, color, religion, sex,
537 sexual orientation, gender identity, or national origin. Such action shall include, but not be
538 limited to the following: employment, upgrading, demotion, or transfer; recruitment or
539 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
540 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
541 places, available to employees and applicants for employment, notices to be provided by the
542 Contracting Officer setting forth the provisions of this nondiscrimination clause.

543 (b) The Contractor will, in all solicitations or advancements for employees
544 placed by or on behalf of the Contractor, state that all qualified applicants will receive
545 consideration for employment without regard to race, color, religion, sex, sexual orientation,
546 gender identity, or national origin.

547 (c) The Contractor will not discharge or in any other manner discriminate
548 against any employee or applicant for employment because such employee or applicant has
549 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
550 employee or applicant. This provision shall not apply to instances in which an employee who has
551 access to the compensation information of other employees or applicants as a part of such
552 employee's essential job functions discloses the compensation of such other employees or
553 applicants to individuals who do not otherwise have access to such information, unless such
554 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
555 proceeding, hearing, or action, including an investigation conducted by the employer, or is
556 consistent with the Contractor's legal duty to furnish information.

557 (d) The Contractor will send to each labor union or representative of workers
558 with which he has a collective bargaining agreement or other contract or understanding, a notice,
559 to be provided by the agency Contracting Officer, advising the labor union or workers'
560 representative of the Contractor's commitments under section 202 of Executive Order No. 11246
561 of September 24, 1965, and shall post copies of the notice in conspicuous places available to
562 employees and applicants for employment.

563 (e) The Contractor will comply with all provisions of Executive Order No.
564 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
565 Labor.

566 (f) The Contractor will furnish all information and reports required by
567 Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of
568 the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
569 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
570 ascertain compliance with such rules, regulations, and orders.

571 (g) In the event of the Contractor's noncompliance with the nondiscrimination
572 clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may
573 be canceled, terminated or suspended in whole or in part and the Contractor may be declared
574 ineligible for further Government contracts in accordance with procedures authorized in
575 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and

576 remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule,
577 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

578 (h) The Contractor will include the provisions of paragraphs (a) through (h) in
579 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
580 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
581 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
582 Contractor will take such action with respect to any subcontract or purchase order as may be
583 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
584 for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or
585 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
586 Contractor may request the United States to enter into such litigation to protect the interests of
587 the United States.

588 **COMPLIANCE WITH CIVIL RIGHTS**

589 16. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
590 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
591 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
592 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
593 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
594 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
595 Interior and/or Bureau of Reclamation.

596 (b) These statutes prohibit any person in the United States from being
597 excluded from participation in, being denied the benefits of, or being otherwise subjected to
598 discrimination under any program or activity receiving financial assistance from the Bureau of
599 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
600 Agreement, the Contractor agrees to immediately take any measures necessary to implement this
601 obligation, including permitting officials of the United States to inspect premises, programs, and
602 documents.

603 (c) The Contractor makes this agreement in consideration of and for the
604 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
605 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
606 Reclamation, including installment payments after such date on account of arrangements for
607 Federal financial assistance which were approved before such date. The Contractor recognizes
608 and agrees that such Federal assistance will be extended in reliance on the representations and
609 agreements made in this article and that the United States reserves the right to seek judicial
610 enforcement thereof.

611 (d) Complaints of discrimination against the Contractor shall be investigated
612 by the Contracting Officer's Office of Civil Rights.

613

CERTIFICATION OF NONSEGREGATED FACILITIES

614 17. The Contractor hereby certifies that it does not maintain or provide for its
615 employees any segregated facilities at any of its establishments and that it does not permit its
616 employees to perform their services at any location under its control where segregated facilities
617 are maintained. It certifies further that it will not maintain or provide for its employees any
618 segregated facilities at any of its establishments and that it will not permit its employees to
619 perform their services at any location under its control where segregated facilities are
620 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
621 Employment Opportunity clause in this Agreement. As used in this certification, the term
622 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
623 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
624 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
625 facilities provided for employees which are segregated by explicit directive or are in fact
626 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
627 disability, or otherwise. The Contractor further agrees that (except where it has obtained identical
628 certifications from proposed subcontractors for specific time periods) it will obtain identical
629 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
630 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
631 will retain such certifications in its files; and that it will forward the following notice to such
632 proposed subcontractors (except where the proposed subcontractors have submitted identical
633 certifications for specific time periods):

634
635

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
CERTIFICATIONS OF NONSEGREGATED FACILITIES**

636 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract
637 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
638 Opportunity clause. The certification may be submitted either for each subcontract or for all
639 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
640 making false statements in offers is prescribed in 18 U.S.C. § 1001.

641

MEDIUM FOR TRANSMITTING PAYMENTS

642 18. (a) All payments from the Contractor to the United States under this
643 Agreement shall be by the medium requested by the United States on or before the date payment
644 is due. The required method of payment may include checks, wire transfers, or other types of
645 payment specified by the United States.

646 (b) Upon execution of the Agreement, the Contractor shall furnish the
647 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose
648 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising
649 out of the Contractor’s relationship with the United States.

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AGREEMENT DRAFTING CONSIDERATIONS

19. This Agreement has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Agreement pertains. Articles _ through _ of this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

659
660 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
661 and year first above written.

662

663 THE UNITED STATES OF AMERICA

664 By: _____
665 Regional Director
666 Interior Region 10: California-Great Basin
667 Bureau of Reclamation
668

669 San Luis Delta-Mendota Canal Authority
670 (SEAL)

671 By: _____
672 Chair, Board of Directors

673 Attest:

674 _____
675 Secretary
676