

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 ADMINISTERED SAN LUIS RESERVOIR**

TABLE OF CONTENTS

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2
1	Definitions.....	87
2	Term of Agreement.....	11 10
3	Cost Share	13 12
4	Management Principles of Expanded Reservoir.....	18 16
5	Existing Contracts.....	26 23
6	Dispute Resolution.....	26 24
7	Waiver of Non-compliance with Any Provision of this Agreement.....	27 24
8	Notices	27 24
9	Contingent on Appropriation or Allotment of Funds	27 25
10	Officials Not to Benefit.....	27 25
11	Assignment Limited - Successors and Assigns Obligated.....	27 25
12	Books, Records, and Reports.....	28 25
13	Compliance with Federal Reclamation Laws	28 25
14	Protection of Water and Air Quality.....	28 26
15	Water Conservation	28 26
16	Equal Employment Oppurtunity	29 26
17	Compliance with Civil Rights.....	30 28
18	Certification of Nonsegrated Facilities	31 28

Contract No. 24-WC-20-6280

19	Medium for Transmitting Payments	3129
20	Agreement Drafting Considerations	3229
	Signature Page.....	31

- Exhibit A: Contributed Funds Agreement
- Exhibit B: Spend Plan
- Exhibit C: Repayment Contract
- Exhibit D: Coordination Agreement

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OF THE FEDERALLY ADMINISTERED SAN LUIS RESERVOIR**

Commented [ERE1]: Reclamation Accepts

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); including the Act
3 of February 21, 1911 (36 Stat. 925), the Reclamation Project Act of 1939, as amended (53 Stat.
4 1187; 43 U.S.C. Part 485); the San Luis Act of 1960, as amended (Public Law 86-488, 74 Stat.
5 156); the Reclamation Safety of Dams Act of 1978 (Public Law 95-578, 92 Stat. 2471); the
6 Reclamation Reform Act of 1982, as amended (Public Law 97-293, 96 Stat. 1261); and Section
7 305 of the Reclamation States Emergency Drought Relief Act of 1991, enacted March 5, 1992
8 (106 Stat. 59), the Central Valley Project Improvement Act of 1992, as amended (Public Law
9 102-575, 106 Stat. 4706); and the Water Infrastructure Improvement for the Nation Act of 2016
10 (Public Law 114-322, 130 Stat. 1865); made between the UNITED STATES BUREAU OF
11 RECLAMATION hereinafter the United States or Reclamation, and represented by the officer

Commented [ERE2]: Investors proposed putting in Warren Act Authority

Commented [ERE3R2]: Reclamation Accepts

Commented [ERE4]: Builds off of Warren Act water above - Authority to convey and store M&I under Warren Act

12 executing this Agreement, hereinafter referred to as the Contracting Officer, and the SAN LUIS
13 & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the Authority,
14 individually referred to as “Party” and collectively referred to as “Parties”.

15 **EXPLANATORY RECITALS**

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

20 [2nd] WHEREAS, the United States holds title, and plans to continue to hold title to the
21 B.F. Sisk Dam and San Luis Reservoir and authorized features of the San Luis Unit as provided
22 for in the San Luis Act of 1960; and-

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

29 [3rd] WHEREAS, consistent with the San Luis Act of 1960, Reclamation and DWR
30 share responsibility for the costs of operation, maintenance, and replacement of B.F. Sisk Dam
31 and San Luis Reservoir, consistent with the 1961 Agreement Between the United States of
32 America and The Department of Water Resources of the State of California for the Operation of
33 the San Luis Unit and all supplements and amendments, Contract No. 14-06-200-9755 (1961
34 Agreement); and

35 ~~WHEREAS, the United States holds title, and will continue to hold title to the B.F. Sisk~~
36 ~~Dam and San Luis Reservoir and authorized features of the San Luis Unit as provided for in the~~
37 ~~San Luis Act of 1960; and~~

38 [4th] ~~WHEREAS, consistent with the San Luis Act of 1960, Reclamation is responsible~~
39 ~~for 55% and DWR is responsible for the 45% of the costs of operation, maintenance, and~~
40 ~~replacement of B.F. Sisk Dam and San Luis Reservoir; and WHEREAS, the United States was~~
41 ~~authorized to construct the San Luis Unit of the Central Valley Project, a joint use project, shared~~
42 ~~with the State of California and administered through the Department of Water Resources~~
43 ~~(DWR), the operations of which are coordinated between Reclamation and DWR consistent with~~
44 ~~the 1961 Agreement and all supplements and amendments; and~~

46 [5th] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary
47 maintenance work to B.F. Sisk Dam to improve the safety of the continued operation and
48 maintenance of aforementioned dam; and

Commented [A5]: Use actual name of SOD Project

49 [6th] WHEREAS, consistent with Reclamation's Directives and Standards at CMP 09-
50 02 and FAC 06-05, Reclamation is authorized to assess the feasibility of increasing San Luis
51 Reservoir storage capacity in conjunction with the Safety of Dams (SOD) improvements
52 storage capacity of San Luis Reservoir to add additional storage and to take advantage of a
53 potential savings in project construction by leveraging the Safety of Dams (SOD) improvements
54 with a feasible storage project; and

Commented [A6]: Check FAC 06-05 and maintain consistency

55 [7th] WHEREAS, in addition to the construction to address safety of dam work, in
56 accordance with the Reclamation Safety of Dams Act of 1978 (Public Law 95-578, 92 Stat.

Commented [ERE7]: Reclamation Accepts

Commented [A8]: Input SOD Project Name

57 2471) and ~~the implementing regulations at~~ 43 U.S.C. § 509 b to develop additional project

Commented [A9]: Capture SOD and Reclamations policy -

Commented [A10]: Verify and Check citation

58 benefits, in December 2020, the Expansion Project was determined to be feasible ~~which would~~
59 ~~raise B.F. Sisk Dam an additional ten feet which will provide an additional estimated 130~~
60 ~~thousand acre feet (TAF) of storage in San Luis Reservoir;~~ and

Commented [A11]: Put actual title of feasibility report

61 [8th] WHEREAS, following the finding of feasibility ~~that raising B.F. Sisk Dam in~~
62 ~~coordination with construction of the SOD improvements would be feasible~~, in accordance with
63 §4007 of the Water Infrastructure and Improvement for the National Act (WIIN) (Public Law
64 114-322), on October 20, 2023, Congress authorized construction and associated funding for the
65 B.F. Sisk Dam Raise and Reservoir Expansion Project; and

Commented [A12]: Proposed to cut and put into definition of expansion project

66 [9th] WHEREAS, Reclamation signed a Record of Decision for the Environmental
67 Impact Statement/Report (EIS/R), entitled B.F. Sisk Dam Raise and Reservoir Expansion
68 Project, selecting the Dam Raise Alternative ~~which would raise B.F. Sisk Dam an additional ten~~
69 ~~feet higher than the SOD improvements and share in the storage and cost of the Expanded~~
70 ~~Reservoir, 70% to the non-federal investors, represented by the Authority, , and 30% to~~
71 ~~Reclamation for authorized purposes of the Central Valley Project (CVP); and~~

72 [10th] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority
73 agree to enter into ~~this a Cost Share~~ Agreement for up to 50% ~~federal share~~ of the costs of the
74 Expansion Project including, but not limited to, planning, design, and construction, and as further
75 defined in this Agreement; and

76 [11th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
77 States, and the Authority representing ~~a subset of~~ Investors who will collectively share in the
78 costs of the Expansion Project, desire to use ~~the increased storage capacity created by the~~
79 Expansion Project ~~and as defined in this Agreement~~ in a such a manner as may be mutually
80 agreeable to the Parties hereto; and

Commented [A13]: Possibly put in agreement - and WIIN

81 [12th] WHEREAS, ~~in addition to this Agreement~~~~this WIIN 4007 Agreement, for the~~
82 ~~management of the expanded San Luis Reservoir and cost share of design, construction, and~~
83 ~~other ancillary charges associated with raising of the B. F. Sisk Dam and increased storage~~
84 ~~capacity of the federally administered San Luis Reservoir, is the base agreement, there may be~~
85 additional agreements that are required to facilitate design and construction and operations;
86 ~~such~~ those agreements may be exhibits to this agreement and may include, but are not limited to,
87 a (§4007(b)(3)(c) and 4011(e)(2)) Contributed Funds Agreement, an O&M Agreement, a
88 (§4007(b)(3)(c) and 4011(e)(2)) Repayment Contract, a Spend Plan, and a Coordination
89 Agreement; and

Commented [A14]: Update when we get to that section

90 [13th] WHEREAS, other agreements and/or contracts necessary for commencing
91 construction and operation of the Expanded Reservoir may be necessary and may be
92 incorporated by amendment of this Agreement, and may include, but are not limited to, a
93 contributed funds agreement providing for the contribution of funds from Federal cost share
94 partners (§4007(b)(3)(b)); and a repayment contract providing for repayment of reimbursable
95 obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate; and which may require further
96 delegation of authority from the Commissioner of Reclamation to negotiate and make a part of
97 this Agreement; and

Commented [A15]: Further develop 12 to incorporate 13

98 [14th] ~~WHEREAS, the Parties desire to manage the additional capacity associated with~~
99 ~~the expansion of San Luis Reservoir and share in the cost of design and construction and other~~
100 ~~associated costs pertaining to the Expanded Reservoir consistent with the terms and conditions~~
101 ~~contained herein.~~

Commented [ERE16]: Reclamation Accepts

102 NOW, THEREFORE, ~~the Parties desire to manage the additional capacity associated~~
103 ~~with the expansion of San Luis Reservoir and share in the costs pertaining to the Expanded~~

Commented [A17]: Possibly add a recital with the Authority for the investors and the agreement that they have

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104 Reservoir consistent with and in consideration of the mutual and dependent covenants herein
105 contained, the Parties hereto agree as follows:

106 **DEFINITIONS**

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

109 (a) "Acquired Project Water" shall mean Project CVP WWater acquired by an
110 Investor, from another CVP Water Service/Repayment Contractor, Sacramento River Settlement
111 Contractor, or San Joaquin River Exchange Contractor.

Commented [A18]: non allocated water supply further discussion and possibly be in line with reschedule g

Commented [A19]: Proposed to include rescheduled water

112 (b) "Calendar Year" shall mean the period January 1 through December 31,
113 both dates inclusive.

114 (c) "Contracting Officer" shall mean the Secretary of the Interior's duly
115 authorized representative acting pursuant to this Contract Agreement or applicable Federal
116 Reclamation law or regulation.

Commented [ERE20]: Reclamation Accepts

117 (d) "Contributed Funds Agreement" shall mean the agreement by which the
118 Authority on behalf of the and Investors contributes to the cost of the Expansion Project, entered
119 into pursuant to the Sundry Civil Appropriations Act of March 4, 1921 (Pub. L. 66-389; 41 Stat.
120 1404; 43 USC 395).

Commented [ERE21]: Reclamation Accepts for conciseness

121 (e) "Coordination Agreement" shall mean the agreement provided for in
122 subarticle 4(gf) of this Agreement.

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Commented [ERE22]: Need to verify at end of negotiations

123 (f) "Expanded Reservoir" shall mean the cumulative volume of storage
124 availabilavailability in the Federal Share and the Investor Share and non-Federal portion of the

125 expanded San Luis Reservoir resulting from the Expansion Project, ~~which would raise B.F. Sisk~~
126 ~~Dam an additional ten feet which will provide an additional estimated 130 thousand acre feet~~
127 ~~(TAF) of storage in San Luis Reservoir.~~

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128 (g) "Expansion Project" shall mean the B.F. Sisk Dam Raise and Reservoir
129 Expansion Project, ~~and~~ consistent with the Record of Decision, dated October 20, 2023, as may
130 be amended or supplemented, ~~as described in the recitals dated October 20, 2023, which would~~
131 ~~raise B.F. Sisk Dam an additional ten feet which will provide an additional estimated 130~~
132 ~~thousand acre feet (TAF) of storage in San Luis Reservoir.~~

Commented [A23]: Proposed to cut and put into definition of expansion project

Commented [ERE24R23]: This makes sense Reclamation open to accepting

133 (h) "Federal Share of Historic Reservoir" shall mean storage volume of 966
134 TAF in the Historic Reservoir.

Commented [ERE25]: Reclamation moved from f to g as proposed from investors

Commented [ERE26]: Reclamation Accepts

135 (i) "Investor Share of Expanded Reservoir" shall be the commensurate with
136 the level of investment ~~into~~ the Expansion Project.

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Commented [ERE27]: Reclamation Accepts

Commented [ERE28]: Needs to be alphabetically ordered at end of negotiations or next exhibit

137 (h) "Historic Reservoir" shall mean storage volume of ~~2.028~~ ~~966~~ T Million
138 ~~Acre-Feet~~ (MAF) in San Luis Reservoir.

Commented [A29]: Total amount

139 (i) "Investors" shall mean those entities and/or organizations that ~~have agreed~~
140 ~~to share in the costs of the Expansion Project and~~ are represented by the Authority pursuant to
141 the B.F. Sisk Dam Raise and Reservoir Expansion Project Activity Agreement and all
142 ~~supplements and amendments~~ San Luis & Delta Mendota Water Authority in this Agreement.

Commented [ERE30]: Agreement Number or date needed

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

147 (k) ~~“Non-Project Water” shall mean all water acquired by or available to the~~
148 ~~contractor(s). Contractor(s) that has~~ve not been appropriated or acquired by the United States and
149 as further described herein.

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Commented [A31]: Further discussion needed

Commented [A32R31]: Proposed Language - “Non-Project Water” shall mean all water acquired that has not been appropriated or acquired by the United States and as further described herein.

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Commented [ERE33]: Reclamation open to accepting but needs to ensure that it is in line with document and why would they want to strike by the contractors

Commented [ERE34]: Reclamation Accepts

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

153 (m) “Parties” shall mean ~~the United States or~~ Reclamation on behalf of the
154 ~~United States and the Authority on behalf of the Investors, San Luis & Delta Mendota Water~~
155 ~~Authority, representing Investors.~~

Commented [ERE35]: Reclamation Accepts

156 (n) “Project Water” ~~shall mean water developed by and diverted under the~~
157 ~~authority of the Central Valley Project subject to the water rights applications and permits~~
158 ~~provided by the State of California Water Resources Control Board and relevant contracts~~
159 ~~otherwise cited herein.~~ shall mean all water that is developed, diverted, stored, or delivered by
160 ~~the Secretary in accordance with the statutes authorizing the Project and in accordance with the~~
161 ~~terms and conditions of water rights acquired pursuant to California law;~~

Commented [A36]: Ensure uniformity throughout

Commented [A37]: Possibly define or input CVP

Commented [ERE38]: Reclamation Accepts - Language from Water Service Contracts

162 (o) “Repayment Contract” shall mean a new contract, ~~if any,~~ resulting from
163 the Expansion Project the purpose of which is to recover ~~any~~the reimbursable costs, ~~from the~~
164 ~~Investors,~~ entered into pursuant to Section 9(c)(1) and/or 9(d) of the Reclamation Project Act of
165 1939, as amended.

Commented [ERE39]: Reclamation Accepts

Commented [A40]: Further Comment

166 (p) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
167 Reservoir.

168 (q) "San Luis Rescheduling Guidelines" shall mean the Rescheduling
169 Guidelines for the Federal Share of Storage in San Luis Reservoir, Central Valley Project,
170 California Great Basin Region, dated ~~January 31, 2022~~~~March 12, 2021~~, as may be amended or
171 superseded.

Commented [A41]: Confirm the date
Commented [ERE42R41]: Date update with most recent guidelines

172 (r) "Spend Plan" shall mean the plan provided for in subarticle 3(e) of this
173 Agreement.

Commented [A43]: Further define

174 (s) "Substantial Completion" shall have the same meaning as defined in FAC
175 01-05 as amended or supplemented.

Commented [ERE44]: Reclamation Accepts

176 (t) "Water Master/Manager" shall mean the individual provided for in
177 subarticle ~~4(c)~~(3)(i) of this Agreement.

Commented [ERE45]: Have to verify at end

178 (u) "Year" shall mean the period from and including March 1 of each Calendar
179 Year through the last day of February of the following Calendar Year.

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TERM OF AGREEMENT

180
181 2. (a) This Agreement is effective on the date hereinabove written; and will
182 remain in full force during the duration of the useful life of the Project or until terminated.

183 (b) The Contracting Officer may terminate this Agreement at any time before
184 the expiration of its term whenever the Contracting Officer determines that the Authority is in
185 substantial violation of the Agreement as provided in this Article 2(b) or otherwise in violation
186 of federal law or Reclamation Policy; provided, that prior to the effective date of any such
187 termination, the Contracting Officer shall first notify the Authority in writing of, the specific
188 purported deficiencies of the Authority in carrying out the terms and conditions of this
189 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as

190 expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If
191 after the designated representative of the Authority has met with the Contracting Officer or his or
192 her designated representative and attempt in good faith and with the use of best efforts to resolve
193 any dispute arising from the purported deficiency an agreement is not reached, the Contracting
194 Officer may issue a notice of proposed termination, which includes the specific deficiencies of
195 the Authority's performance under this Agreement. The Authority shall have at least ninety (90)
196 days from receipt of the written notice of proposed termination to correct all deficiencies referred
197 to in said written notice; Provided, That in the event of a condition which threatens the safety or
198 integrity of the Expansion Project, the Contracting Officer may specify a shorter correction
199 period which the Contracting Officer determines to be appropriate under the circumstances. In
200 the event the Authority does not correct all deficiencies referred to in said written notice within
201 the applicable period, the Contracting Officer may thereafter terminate this Agreement upon
202 thirty (30) days prior written notice to the Authority. Any termination pursuant to this Article
203 shall be subject to the rights and obligations of the Parties as more specifically set forth in this
204 Agreement.

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

210 (d) The United States and the Authority jointly shall review this Agreement,
211 which review shall be performed at least every five (5) years. A more frequent review will be
212 established if determined to be appropriate by the Contracting Officer. The Parties shall compare

213 the relative success which each party has had in meeting its objectives, including, but not limited
214 to, the Contributed Funds Agreement, an O&M Agreement, a Repayment Contract, a Spend
215 Plan, and a Coordination Agreement, which agreements will be exhibits to this Agreement. From
216 time to time, the exhibits to this Agreement may require modification and will be mutually
217 agreed upon, which may require amendment to this Agreement. From time to time, the exhibits
218 associated with this Agreement will require modification and will be mutually agreed upon
219 without amendment to this Agreement.

220 **COST SHARE**

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

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

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

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

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

236 (1) The Parties have reviewed the Expansion Project costs incurred by
237 the Authority and the Investors and Reclamation prior to the effective date of this Agreement.
238 The Parties acknowledge and agree that the Investors have incurred costs totaling \$ _____
239 and Reclamation has incurred costs totaling \$ _____, which allowable amounts will be credited
240 to each Party's cost share obligation under this Agreement.

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

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

251 (4) Cultural Costs: Either Party may fund cultural studies,
252 investigations, and mitigation needs consistent with this Agreement. Reclamation will be
253 responsible for all necessary consultations with state offices, Indian tribes, and interested parties
254 pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.

255 Reclamation will be responsible for compliance and coordination with the Native American
256 Graves Protection and Repatriation Act of 1990.

257 (5) Permitting Costs: Additional permitting actions prior to
258 construction of the Expansion Project and prior to declaring the Expansion Project “Substantially
259 Complete” may be required. Reclamation and the Authority will jointly determine, as
260 appropriate, the appropriate Party to obtain any necessary permit(s). (6) Administrative Costs:
261 Reclamation will reserve sufficient funding from Federal appropriations to cover its
262 administrative and management costs associated with the Expansion Project. This amount will be
263 considered part of the overall Federal contribution. Reclamation will provide an estimate of the
264 administrative costs for this Expansion Project which will be reviewed with the Authority. The
265 Authority will reserve sufficient funding to pay for its administrative costs for the non-Federal
266 share of the Expansion Project. These costs will be considered contributions to the non-Federal
267 share of the Expansion Project and reported pursuant to subarticle 3(f). Administrative costs
268 include, unless otherwise defined by contracts: project management, construction management,
269 accounting and administrative management, legal support and review, travel, general meetings
270 related to the Expansion Project, contract/agreement technical meetings and negotiations, and
271 other supportive services and activities necessary for the construction and operation of the
272 Expansion Project prior to the determination of Substantial Completion.

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

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

282 (9) Design and Construction Costs: Includes design and construction
283 of associated facilities affected or involved with the Expansion Project including, but not limited
284 to, recreation facilities, power improvements to existing facilities, improvements to pumps,
285 transportation, and other various components of the Expansion Project.

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

292 (d) There may be times when Reclamation provides funds to the Authority.
293 These funds will be provided through a financial assistance agreement as provided for in
294 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be
295 considered part of the cost of this Expansion Project and shared in accordance with Article
296 3(a)(1).

297 (e) Within sixty ~~(6060)~~ days of the execution of this Agreement, if not before,
298 Reclamation and the Authority will develop a Spend Plan containing mutually agreeable terms to
299 track costs and account for funds expended. The Spend Plan will be an exhibit to this Agreement.

Commented [A46]: Discuss 60 Days

Commented [ERE47R46]: Authority proposed further time, might want to give them a copy of FKC Spend Plan so they are able to see what it entails.

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

303 (g) Repayment: As currently formulated, Reclamation does not anticipate the
304 need for a repayment contract for repayment of costs associated with the design and construction
305 of the Expansion Project. Reclamation and the Authority will, at the quarterly check-ins
306 described in sub-article (f) above, review the need for a Repayment Contract. If a repayment
307 contract is necessary, Reclamation will seek delegated authority from the Commissioner to
308 negotiate and execute said contract which will be an exhibit to this Agreement. The Parties will
309 closely monitor the potential for reimbursable costs and the need for a repayment contract and
310 conduct any necessary financial analysis, in accordance with PEC 11-01, prior to executing any
311 repayment contracts.

312 (i) It is anticipated that the Federal share of costs associated
313 with the Expansion Project will be used for purposes deemed to be non-reimbursable, therefore
314 the Federal share of costs associated with the Expansion Project will be non-reimbursable.

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

318
319 (h) A final accounting of Expansion Project benefits will be necessary to
320 determine final benefits of the Expansion Project and the allocation to Reclamation and the
321 Investor. At the time of final accounting, Reclamation, in coordination with the Expansion

Commented [ERE48]: Reclamation proposes moving this from Management of the Expanded Reservoir to Cost Share Portion

322 Project beneficiaries, will assess the Expansion Project costs and make a determination of which
323 Expansion Project costs are reimbursable and which Expansion Project costs are non-
324 reimbursable.

325 **MANAGEMENT PRINCIPLES OF EXPANDED RESERVOIR**

Commented [ERE49]: Reclamation Accepts

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

332 (a) Authority

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

334 authorized the Secretary of the Interior to construct, operate, and maintain an afterbay, forebay,
335 conveyance facilities, and dam and Reservoir for the joint use by the State of California and the
336 United States. As provided in Section 2 of the Act, the Secretary was authorized to enter into an
337 agreement with the State of California to provide for the coordinated operation of the San Luis
338 Unit which resulted in a 1961 Joint Coordination Agreement and subsequent amendatory and
339 supplemental agreements of 1972 and 1997. Nothing in this Agreement shall alter or change the
340 Joint coordination Agreements between the United States and the State of California except as is
341 deemed necessary by Reclamation in consultation with the State of California to accommodate
342 the Expansion Project and account for any changed operation or maintenance of the Expanded
343 Reservoir and raised dam.

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

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

353 (b) Nothing in this Agreement shall imply or convey any rights or process to
354 the Investors or their assignees for rights or privileges to water or operations in the
355 Federal Share of the Expanded Reservoir or the Historic Reservoir and the Investors
356 agree that they shall not seek these rights outside of this Agreement.

357 (c) Expanded Project Storage

358 (1) The Parties agree, subject to the terms of this Agreement, that no
359 Project Water will be used to fill the Expanded Reservoir until such time as the Historic
360 Reservoir is filled. Combined federal and state storage in the Historic Reservoir is 2.028 million
361 acre feet and is shared with the State of California on a proportionate basis of 52.38% State share
362 and 47.62% federal share.

Commented [ERE50]: Reclamation accepts - language that was input into definitions

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

Commented [ERE51]: Reclamation Accepts

366 (ii) The Parties agree that Reclamation and the California
367 Department of Water Resources have the sole discretion of the operations of the Historic
368 Reservoir and any water pumped into the Historic Reservoir, and Reclamation has sole discretion
369 of the operations of the Expanded Reservoir, consistent with existing laws, agreements, and
370 obligations, with the State of California.

Commented [A52]: This may be considered for other areas such as a recital
Commented [ERE53R52]: Better in text of document to ensure enforceability

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

375 (i) It is anticipated that the Federal share of costs associated
376 with the Expansion Project will be used for purposes deemed to be non-reimbursable, therefore
377 the Federal share of costs associated with the Expansion Project will be non-reimbursable.

Commented [A54]: Proposed moving this into cost share portion
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378 (ii) If reimbursable benefits are identified upon the final
379 allocation of costs, Reclamation will establish appropriate recovery of said reimbursable costs
380 consistent with Reclamation law and policy.

Commented [ERE55]: Reclamation proposes moving them to g in the cost share article
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381 (3) Investment sShare: The Iinvestment Sshare of the Expanded
382 Reservoir will be commensurate to the final allocated costs for the Expansion Project. The
383 Parties mutually agree to the use of the Expanded Reservoir in a way that mutually benefits the
384 Parties and is commensurate to the final allocated costs.

Commented [A56]: This might be a good area for how the investors are able to utilize their share
Commented [A57R56]: The deleted language needs to be verified that it is in recitals or somewhere else

385 (i) Water Master The Parties agree that a Water Master or
386 Water Manager will be provided and paid for by the Authority who will account for the water in
387 the Investor Sshare of the Expanded Reservoir who will be responsible for the provisional data

Commented [ERE58R56]: It was moved to coordination section
Commented [A59]: Add a definition?
Commented [ERE60R59]: Done

388 ~~and coordinating with Reclamation on reconciliation at the end of the contract year and prior to~~
389 ~~initial allocations of the following Year.~~

Commented [A61]: Language in this section proposed by investors

Commented [ERE62R61]: Reclamations accepts movement to 4 (g) Coordination

390 (a) ~~Reclamation and the Authority will develop a plan~~
391 ~~to coordinate and communicate and define roles and responsibilities prior to the storage of water~~
392 ~~in the Expanded Reservoir.:~~

Commented [A63]: Might be better in 4(g)

Commented [ERE64R63]: Reclamation accepts - logical

393 (ii) The following water types may be stored in the Investor
394 share of the Expanded Reservoir ~~and used at the discretion of the Investors~~ subject to the terms
395 of this Agreement:

Commented [ERE65]: Water Master Language was moved to 4 (g) Coordination - logical

Commented [A66]: Proposed Language - PP

Commented [ERE67R66]: Further Discussion Required

Commented [ERE68R66]: Does Reclamation need to approve water going in and out of the expanded reservoir.

396 (ae) ~~Non-Project Water~~ ~~Non-CVP Water includes~~
397 ~~water acquired from contracts with the State of California or water acquired through purchase or~~
398 ~~transfer from a non-federal contractor or water purveyor which water is verifiable and available~~
399 ~~consistent with State and Federal law.~~

Commented [A69]: Removed because this is a defined term

Commented [ERE70R69]: Reclamation accepts

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400 (i) With the exception of State Water Project
401 water that may already exist in San Luis Reservoir and ~~/-or isis~~ conveyed through the State Water
402 Project or under agreement with Reclamation, all ~~Non-PP~~Project ~~W~~water is subject to a contract
403 ~~Warren Act Contract~~ for the use of excess conveyance capacity in Federal facilities, pursuant to
404 the Warren Act (Act of February 21, 1911 (36 Stat. 925)), ~~to be used to convey Non-Project Water~~
405 ~~to or from San Luis Reservoir~~ that may need to be utilized in the conveyance of Non-Project
406 Water to the San Luis Reservoir.

Commented [A71]: In Authority Section and Define

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407 (ii+) Storage of Non-Project Water ~~stored~~ in the
408 Investor share of the Expanded Reservoir will not ~~be subject to require~~ a Warren Act Contract.
409 However,

Commented [A72]: New (iii) The Investors may utilize Non-Project Water to displace project water stored in the Investors share of the Expanded Reservoir. (Proposed Language) PP

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

414 (iii) For the purpose of this Agreement ~~and~~
415 ~~consistent with the San Luis Rescheduling Guidelines, unless otherwise amended,~~ San Joaquin
416 River Restoration water recaptured consistent with permits issued by the State Water Resources
417 Control Board will be treated as having the same priority as Non-Project Water and may be
418 storable in the Investor share of the Expanded Reservoir if acquired by an Investor.

419 (iv) The Parties agree that the Non-Project CVP
420 Water, as defined in subarticle 3(e) of in this Agreement, will not be subject to the spill priorities
421 as provided in the San Luis Rescheduling Guidelines, and Reclamation will not use this water to
422 meet CVP purposes without mutually agreed to water or monetary compensation, subject to
423 appropriations, or a combination thereof, to the Investors, prior to its use.

424 (v) M&I Shortage - Non-Project Water in the
425 Investor portion share of the Expanded Reservoir will not be subject to nor accounted against an
426 Investor's available water, as contemplated in the M&I Water Shortage Policy, as may be
427 amended or superseded, to meet minimum public health and safety needs.

428 (b) Acquired CVP Water ~~is water acquired via~~
429 ~~exchange or transfer with a Project Water Service, Repayment, Settlement, or Exchange~~
430 ~~contractor, where the water was developed, conveyed, and/or stored by or for the CVP for~~
431 ~~beneficial uses consistent with the permits issued by the California State Water Resources~~

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Commented [A73]: Proposed Striking Language

Commented [A74R73]: Reclamation rejects, need to clean up language and ensure intent is correct

Commented [A75]: Technical Discussion - Scenarios and Circumstances

Commented [A76]: Refer to definition

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432 ~~Control Board for the benefit of the CVP; and which water is made available consistent with the~~
433 ~~transfer provisions under Section 3405(a) of the Central Valley Project Improvement Act, as~~
434 ~~amended (Public Law 102-575, 106 Stat. 4706).~~

435 (i) ~~An Investor or a~~ CVP contractor who has
436 invested in the Expansion Project or under separate agreement with an Investor in the Project
437 ~~that who~~ has approved unused rescheduled Project Water in the Historic Reservoir may move
438 their remaining unused amount into the Investor share of the Expanded Reservoir, Provided, that-
439 ~~by no means will~~ this action will not expand the Investor share of the Expanded Reservoir.

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

443 (iii) Reclamation may use ~~this water~~ Acquired
444 CVP Water to meet CVP purposes only after all available federal supplies in the Historic
445 Reservoir have been used by Reclamation to meet CVP needs; and

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

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

452 (c) Project Water

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Commented [A77]: Further discussion needed to ensure consistency with definition

Commented [TNL78R77]: Use before use current year allocation.

Commented [A79]: Further Discussion

Commented [TNL80R79]: Rescheduling guidelines stay the same.

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Commented [A81]: Proposed to Strike Language

Commented [TNL82R81]: Reject

Commented [A83]: Proposed - obligations - clarify

Commented [A84]: Concern regarding reimbursement in the next year and would like compensation similar to Non-Project Water

Commented [A85R84]: Project Partners would like further definition to ensure assurance when and why of when this will occur

Commented [A86R84]: Add clarity on when Reclamation would utilize this provision

Commented [TNL87R84]: SLDMWA needs to propose language and Reclamation needs to propose language. Think about referring to Drought Pool MOU. Work together to avoid issues. Cost and legal analysis of risks, Reclamation decision at the time.

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453 (i) Following the filling of the Historic
454 Reservoir, Reclamation will divert Project Water, in coordination with the Water
455 Master/Manager, on the proportional basis of the final investment, into ~~the Federal share of the~~
456 Expanded Reservoir, until the Federal share of the Expanded Reservoir is full.

Commented [A88]: Proposed language

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

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

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

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

469 (e) Points of Delivery

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

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

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

481 (g) Coordination – Prior to the operation of the Expanded Reservoir,
482 Reclamation and the Authority will develop a Coordination Agreement which will be an Exhibit
483 to this Agreement. The Coordination Agreement will, among other things:

484 (i) Water Master - The Parties agree that a Water Master or
485 Water Manager will be provided and paid for by the Authority who will coordinate with
486 Reclamation regarding the management of any water moving into, stored in, or moving out of
487 the Investor Share of the expanded Reservoir, who will account for the water in the Investor
488 Share of Expanded Reservoir, and who will be responsible for the provisional data and
489 coordinating with Reclamation on reconciliation at the end of the contract year and prior to
490 initial allocations of the following Year.

491 (a) Reclamation and the Authority will develop a
492 Coordination Agreement plan to coordinate and communicate and define roles and
493 responsibilities prior to the storage of water in the Expanded Reservoir.:

Commented [A89]: Add a definition?

Commented [A90]: Language in this section proposed by investors

Commented [A91]: Might be better in 4(g)

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

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

498 (iii) Provide for a dispute resolution process.

499 **EXISTING CONTRACTS**

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

502 **DISPUTE RESOLUTION**

503 6. Should any dispute arise concerning storage of water by the Authority and the
504 Investors in the Expanded Reservoir, between the authority, and/or the Investors, which the
505 Authority and/or the Investors concludes cannot be resolved through negotiations with the other
506 party(ies) to the dispute, the Authority and/or the Investors shall provide its final position with
507 respect to such dispute to the other party(ies) thereto in writing and to the Contracting Officer
508 requesting a determination of the dispute. Within sixty (60) days after such final position is
509 provided, or such other reasonable date as may be agreed upon by the Authority and/or the
510 Investors and the Contracting Officer, the Contracting Officer will issue a written determination
511 regarding the dispute. The Contracting Officer's determination shall be accepted by the
512 Authority and/or the Investors as final and conclusive and the Authority and the Investors shall
513 promptly comply with said decision until the same is stayed, reversed, or modified by a decision
514 of a court of competent jurisdiction.

515 **WAIVER OF NON-COMPLIANCE WITH ANY PROVISION OF THIS AGREEMENT**

516 7. The waiver by either Party to this Agreement as to any non-compliance with any
517 provision of this Agreement shall not be construed as a waiver of any other non-compliance with
518 any provision of this Agreement or as authority of the other Party to continue such non-
519 compliance with any provision of this Agreement or to make, do, or perform, or not make, do, or
520 perform, as the case may be, any act or thing which would constitute non-compliance with any
521 provision of this Agreement.

522 **NOTICES**

523 8. Any notice, demand, or request authorized or required by this Agreement shall be
524 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
525 delivered to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800
526 Cottage Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage
527 prepaid, or delivered to the San Luis and Delta-Mendota Water Authority, 842 6th Street, Los
528 Banos, CA 93635.
529

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

531 9. The expenditure or advance of any money or the performance of any obligation of
532 the United States under this Agreement shall be contingent upon appropriation or allotment of
533 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
534 obligations under this Agreement. No liability shall accrue to the United States in case funds are
535 not appropriated or allotted.

536 **OFFICIALS NOT TO BENEFIT**

537 10. No Member of or Delegate to the Congress, Resident Commissioner, or official of
538 the Contractor shall benefit from this Agreement other than as a water user or landowner in the
539 same manner as other water users or landowners.

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

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

544

BOOKS, RECORDS, AND REPORTS

545 12. The Contractor shall establish and maintain accounts and other books and records
546 pertaining to administration of the terms and conditions of this Agreement, including the
547 Contractor's financial transactions; water supply data; project operation, maintenance, and
548 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
549 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
550 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
551 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
552 regulations, each party to this Agreement shall have the right during office hours to examine and
553 make copies of the other party's books and records relating to matters covered by this
554 Agreement.

555

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

561

PROTECTION OF WATER AND AIR QUALITY

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

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

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

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

579

WATER CONSERVATION

580 15. Prior to the delivery of water provided from or conveyed through federally
581 constructed or federally financed facilities pursuant to this Agreement, the Contractor shall

582 develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform
583 Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

584 **EQUAL EMPLOYMENT OPPORTUNITY**

585 16. The following language is required by Executive Order No. 11246 of September
586 24, 1965, in all government contracts unless and until it is superseded or amended.

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

588 (a) The Contractor will not discriminate against any employee or applicant for
589 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
590 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
591 that employees are treated during employment, without regard to their race, color, religion, sex,
592 sexual orientation, gender identity, or national origin. Such action shall include, but not be
593 limited to the following: employment, upgrading, demotion, or transfer; recruitment or
594 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
595 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
596 places, available to employees and applicants for employment, notices to be provided by the
597 Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

602 (c) The Contractor will not discharge or in any other manner discriminate
603 against any employee or applicant for employment because such employee or applicant has
604 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
605 employee or applicant. This provision shall not apply to instances in which an employee who has
606 access to the compensation information of other employees or applicants as a part of such
607 employee's essential job functions discloses the compensation of such other employees or
608 applicants to individuals who do not otherwise have access to such information, unless such
609 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
610 proceeding, hearing, or action, including an investigation conducted by the employer, or is
611 consistent with the Contractor's legal duty to furnish information.

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

618 (e) The Contractor will comply with all provisions of Executive Order No.
619 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
620 Labor.

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

626 (g) In the event of the Contractor's noncompliance with the nondiscrimination
627 clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may
628 be canceled, terminated or suspended in whole or in part and the Contractor may be declared
629 ineligible for further Government contracts in accordance with procedures authorized in
630 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
631 remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule,
632 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

633 (h) The Contractor will include the provisions of paragraphs (a) through (h) in
634 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
635 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
636 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
637 Contractor will take such action with respect to any subcontract or purchase order as may be
638 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
639 for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or
640 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
641 Contractor may request the United States to enter into such litigation to protect the interests of
642 the United States.

643 **COMPLIANCE WITH CIVIL RIGHTS**

644 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
645 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
646 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
647 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
648 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
649 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
650 Interior and/or Bureau of Reclamation.

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

658 (c) The Contractor makes this agreement in consideration of and for the
659 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
660 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
661 Reclamation, including installment payments after such date on account of arrangements for

662 Federal financial assistance which were approved before such date. The Contractor recognizes
663 and agrees that such Federal assistance will be extended in reliance on the representations and
664 agreements made in this article and that the United States reserves the right to seek judicial
665 enforcement thereof.

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

668 **CERTIFICATION OF NONSEGREGATED FACILITIES**

669 18. The Contractor hereby certifies that it does not maintain or provide for its
670 employees any segregated facilities at any of its establishments and that it does not permit its
671 employees to perform their services at any location under its control where segregated facilities
672 are maintained. It certifies further that it will not maintain or provide for its employees any
673 segregated facilities at any of its establishments and that it will not permit its employees to
674 perform their services at any location under its control where segregated facilities are
675 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
676 Employment Opportunity clause in this Agreement. As used in this certification, the term
677 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
678 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
679 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
680 facilities provided for employees which are segregated by explicit directive or are in fact
681 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
682 disability, or otherwise. The Contractor further agrees that (except where it has obtained identical
683 certifications from proposed subcontractors for specific time periods) it will obtain identical
684 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
685 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
686 will retain such certifications in its files; and that it will forward the following notice to such
687 proposed subcontractors (except where the proposed subcontractors have submitted identical
688 certifications for specific time periods):

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

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

696 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

701 (b) Upon execution of the Agreement, the Contractor shall furnish the
702 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
703 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
704 out of the Contractor's relationship with the United States.

705 **AGREEMENT DRAFTING CONSIDERATIONS**

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

710
711
712
713

714
715 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
716 and year first above written.

717

718

THE UNITED STATES OF AMERICA

719

By: _____

720

Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation

721

722

723

724

San Luis Delta-Mendota Canal Authority

725 (SEAL)

726

By: _____

727

Chair, Board of Directors

728

Attest:

729

730

Secretary

731