

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

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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); 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

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

29 [4th] WHEREAS, the United States was authorized to construct the San Luis Unit of
30 the Central Valley Project, a joint use project, shared with the State of California and
31 administered through the Department of Water Resources (DWR), the operations of which are
32 coordinated between Reclamation and DWR consistent with the 1961 Agreement and all
33 supplements and amendments; and

34

35 [5th] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary
36 maintenance work for the B.F. Sisk Safety of Dams Modification Project to improve the safety
37 of the continued operation and maintenance of aforementioned dam; and

38 [6th] WHEREAS, consistent with Reclamation’s Directives and Standards at CMP 09-
39 02 and FAC 06-05, Reclamation is authorized to assess the feasibility of increasing San Luis
40 Reservoir storage capacity in conjunction with the Safety of Dams (SOD) improvements to
41 determine additional project benefits and to ensure that it is in the best interest of the United
42 States; and

43 [7th] WHEREAS, in addition to the construction to address the B.F. Sisk Safety of
44 Dams Modification Project work, in accordance with the Reclamation Safety of Dams Act of
45 1978 (Public Law 95-578, 92 Stat. 2471) and 43 U.S.C. § 509 b to develop additional project
46 benefits, B.F. Sisk Dam Safety of Dams Modification Report, in December 2020, the Expansion
47 Project was determined to be feasible; and

48 [8th] WHEREAS, following the finding of feasibility, in accordance with §4007 of the
49 Water Infrastructure and Improvement for the Nation Act (WIIN) (Public Law 114-322), on
50 October 20, 2023, Congress authorized construction and associated funding for the B.F. Sisk
51 Dam Raise and Reservoir Expansion Project; and

52 [9th] WHEREAS, Reclamation signed a Record of Decision for the Environmental
53 Impact Statement/Report (EIS/R), entitled B.F. Sisk Dam Raise and Reservoir Expansion
54 Project, selecting the Dam Raise Alternative; and

55 [10th] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority
56 agree to enter into this Agreement for up to 50% federal share of the costs of the Expansion

57 Project including, but not limited to, planning, design, and construction, and as further defined in
58 this Agreement; and

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

63 [12th] WHEREAS, in addition to this Agreement, there may be additional agreements
64 that are required to facilitate design and construction and operations; such agreements may be
65 exhibits to this agreement and may include, but are not limited to, a (§4007(b)(3)(c) and
66 4011(e)(2)) Contributed Funds Agreement, an O&M Agreement, a (§4007(b)(3)(c) and
67 4011(e)(2)) Repayment Contract, a Spend Plan, and a Coordination Agreement; and

68 [13th] WHEREAS, other agreements and/or contracts necessary for commencing
69 construction and operation of the Expanded Reservoir may be necessary and may be
70 incorporated by amendment of this Agreement, and may include, but are not limited to, a
71 contributed funds agreement providing for the contribution of funds from Federal cost share
72 partners (§4007(b)(3)(b)); and a repayment contract providing for repayment of reimbursable
73 obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate; and which may require further
74 delegation of authority from the Commissioner of Reclamation to negotiate and make a part of
75 this Agreement; and

76 NOW, THEREFORE, the Parties desire to manage the additional capacity associated
77 with the expansion of San Luis Reservoir and share in the costs pertaining to the Expanded
78 Reservoir consistent with and in consideration of the mutual and dependent covenants herein, the
79 Parties hereto agree as follows:

DEFINITIONS

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

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

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

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

(d) “Contributed Funds Agreement” shall mean the agreement by which the Authority contributes to the cost of the Expansion Project, entered into pursuant to the Sundry Civil Appropriations Act of March 4, 1921 (Pub. L. 66-389; 41 Stat. 1404; 43 USC 395).

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

(f) “Expanded Reservoir” shall mean the cumulative volume of storage available in the Federal Share and the Investor Share portion of the expanded San Luis Reservoir resulting from the Expansion Project.

(g) “Expansion Project” shall mean the B.F. Sisk Dam Raise and Reservoir Expansion Project, consistent with the Record of Decision, dated October 20, 2023, as may be

101 amended or supplemented, which would raise B.F. Sisk Dam an additional ten feet which will
102 provide an additional estimated 130 thousand acre feet (TAF) of storage in San Luis Reservoir.

103 (h) “Federal Share of Historic Reservoir” shall mean storage volume of 966
104 TAF in the Historic Reservoir.

105 (i) Investor Share of Expanded Reservoir” shall be the commensurate with
106 the level of investment in the Expansion Project.

107 (h) “Historic Reservoir” shall mean storage volume of 2.028 Million Acre-
108 Feet (MAF) in San Luis Reservoir.

109 (i) “Investors” shall mean those entities and/or organizations that are
110 represented by the Authority pursuant to the B.F. Sisk Dam Raise and Reservoir Expansion
111 Project Activity Agreement and all supplements and amendments.

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

116 (k) “Non-Project Water” shall mean all water acquired that has not been
117 appropriated or acquired by the United States and as further described herein.

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

121 (m) “Parties” shall mean Reclamation on behalf of the United States and the
122 Authority on behalf of the Investors.

123 (n) “Project Water” shall mean all water that is developed, diverted, stored, or
124 delivered by the Secretary in accordance with the statutes authorizing the Project and in
125 accordance with the terms and conditions of water rights acquired pursuant to California law.

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

129 (p) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
130 Reservoir.

131 (q) “San Luis Rescheduling Guidelines” shall mean the Rescheduling
132 Guidelines for the Federal Share of Storage in San Luis Reservoir, Central Valley Project,
133 California Great Basin Region, dated January 31, 2022, as may be amended or superseded.

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

136 (s) “Substantial Completion” shall have the same meaning as defined in FAC
137 01-05 as amended or supplemented.

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

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

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TERM OF AGREEMENT

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

(b) The Contracting Officer may terminate this Agreement at any time before the expiration of its term whenever the Contracting Officer determines that the Authority is in substantial violation of the Agreement as provided in this Article 2(b) or otherwise in violation of federal law or Reclamation Policy; provided, that prior to the effective date of any such termination, the Contracting Officer shall first notify the Authority in writing of, the specific purported deficiencies of the Authority in carrying out the terms and conditions of this Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If after the designated representative of the Authority has met with the Contracting Officer or his or her designated representative and attempt in good faith and with the use of best efforts to resolve any dispute arising from the purported deficiency an agreement is not reached, the Contracting Officer may issue a notice of proposed termination, which includes the specific deficiencies of the Authority's performance under this Agreement. The Authority shall have at least ninety (90) days from receipt of the written notice of proposed termination to correct all deficiencies referred to in said written notice; Provided, That in the event of a condition which threatens the safety or integrity of the Expansion Project, the Contracting Officer may specify a shorter correction period which the Contracting Officer determines to be appropriate under the circumstances. In the event the Authority does not correct all deficiencies referred to in said written notice within the applicable period, the Contracting Officer may thereafter terminate this Agreement upon thirty (30) days prior written notice to the Authority. Any termination pursuant to this Article

165 shall be subject to the rights and obligations of the Parties as more specifically set forth in this
166 Agreement.

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

172 (d) The United States and the Authority jointly shall review this Agreement,
173 which review shall be performed at least every five (5) years. A more frequent review will be
174 established if determined to be appropriate by the Contracting Officer. The Parties shall compare
175 the relative success which each party has had in meeting its objectives, including, but not limited
176 to, the Contributed Funds Agreement, an O&M Agreement, a Repayment Contract, a Spend
177 Plan, and a Coordination Agreement, which agreements will be exhibits to this Agreement. From
178 time to time, the exhibits to this Agreement may require modification and will be mutually
179 agreed upon, which may require amendment to this Agreement. From time to time, the exhibits
180 associated with this Agreement will require modification and will be mutually agreed upon
181 without amendment to this Agreement.

182 **COST SHARE**

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

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

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

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

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

198 (1) The Parties have reviewed the Expansion Project costs incurred by
199 the Authority and the Investors and Reclamation prior to the effective date of this Agreement.
200 The Parties acknowledge and agree that the Investors have incurred costs totaling \$ _____
201 and Reclamation has incurred costs totaling \$ _____, which allowable amounts will be credited
202 to each Party’s cost share obligation under this Agreement.

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

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

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

219 (5) Permitting Costs: Additional permitting actions prior to
220 construction of the Expansion Project and prior to declaring the Expansion Project “Substantially
221 Complete” may be required. Reclamation and the Authority will jointly determine, as
222 appropriate, the appropriate Party to obtain any necessary permit(s). (6) Administrative Costs:
223 Reclamation will reserve sufficient funding from Federal appropriations to cover its
224 administrative and management costs associated with the Expansion Project. This amount will be
225 considered part of the overall Federal contribution. Reclamation will provide an estimate of the
226 administrative costs for this Expansion Project which will be reviewed with the Authority. The
227 Authority will reserve sufficient funding to pay for its administrative costs for the non-Federal
228 share of the Expansion Project. These costs will be considered contributions to the non-Federal
229 share of the Expansion Project and reported pursuant to subarticle 3(f). Administrative costs

230 include, unless otherwise defined by contracts: project management, construction management,
231 accounting and administrative management, legal support and review, travel, general meetings
232 related to the Expansion Project, contract/agreement technical meetings and negotiations, and
233 other supportive services and activities necessary for the construction and operation of the
234 Expansion Project prior to the determination of Substantial Completion.

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

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

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

248 (c) Reclamation and the Authority have proposed using their collective funds
249 to fund parts of the Expansion Project. A contributed funds agreement may be necessary to help
250 facilitate transfer of funds to Reclamation from the Authority. Such an agreement, if needed, will
251 be an exhibit to this Agreement. Any funds contributed to Reclamation for the Expansion Project

252 will be considered part of the cost of this Expansion Project and shared in accordance with
253 Article 3(a)(1).

254 (d) There may be times when Reclamation provides funds to the Authority.
255 These funds will be provided through a financial assistance agreement as provided for in
256 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be
257 considered part of the cost of this Expansion Project and shared in accordance with Article
258 3(a)(1).

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

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

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

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

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

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

287 **MANAGEMENT OF EXPANDED RESERVOIR**

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

294 (a) Authority

295 (1) San Luis Act of 1960 (Public Law 86 – 488, 74 Stat. 156)
296 authorized the Secretary of the Interior to construct, operate, and maintain an afterbay, forebay,
297 conveyance facilities, and dam and Reservoir for the joint use by the State of California and the
298 United States. As provided in Section 2 of the Act, the Secretary was authorized to enter into an
299 agreement with the State of California to provide for the coordinated operation of the San Luis
300 Unit which resulted in a 1961 Joint Coordination Agreement and subsequent amendatory and
301 supplemental agreements of 1972 and 1997. Nothing in this Agreement shall alter or change the
302 Joint coordination Agreements between the United States and the State of California except as is
303 deemed necessary by Reclamation in consultation with the State of California to accommodate
304 the Expansion Project and account for any changed operation or maintenance of the Expanded
305 Reservoir and raised dam.

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

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

315 (b) Nothing in this Agreement shall imply or convey any rights or process to
316 the Investors or their assignees for rights or privileges to water or operations in the

317 Federal Share of the Expanded Reservoir or the Historic Reservoir and the Investors
318 agree that they shall not seek these rights outside of this Agreement.

319 (c) Expanded Project Storage

320 (1) The Parties agree, subject to the terms of this Agreement, that no
321 Project Water will be used to fill the Expanded Reservoir until such time as the Historic
322 Reservoir is filled.

323 (i) The Parties agree that Reclamation and the California
324 Department of Water Resources have the sole discretion of the operations of the Historic
325 Reservoir and any water pumped into the Historic Reservoir, and Reclamation has sole discretion
326 of the operations of the Expanded Reservoir, consistent with existing laws, agreements, and
327 obligations.

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

332 (3) Investor Share: The Investor Share of the Expanded Reservoir will
333 be commensurate to the final allocated costs for the Expansion Project. The Parties mutually
334 agree to the use of the Expanded Reservoir in a way that mutually benefits the Parties and is
335 commensurate to the final allocated costs.

336 (i) The following water types may be stored in the Investor
337 share of the Expanded Reservoir and used at the discretion of the Investors subject to the terms
338 of this Agreement:

339 (a) Non-Project Water

340 (i) With the exception of State Water Project
341 water that may already exist in San Luis Reservoir and/or is conveyed through the State Water
342 Project or under agreement with Reclamation, all Non-Project Water is subject to a contract for
343 the use of excess conveyance capacity in Federal facilities, pursuant to the Warren Act (Act of
344 February 21, 1911 (36 Stat. 925)), in order to convey Non-Project Water to or from San Luis
345 Reservoir.

346 (ii) Storage of Non-Project Water in the Investor
347 share of the Expanded Reservoir will not require a Warren Act Contract. However, any water
348 that is stored in the Investor share of the Expanded Reservoir that may be moved into and
349 accounted for in the Historic Reservoir will require a Warren Act Contract.

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

355 (iv) The Parties agree that the Non-Project
356 Water, as defined in this Agreement, will not be subject to the spill priorities as provided in the
357 San Luis Rescheduling Guidelines, and Reclamation will not use this water to meet CVP
358 purposes without mutually agreed to water or monetary compensation, subject to appropriations,
359 or a combination thereof, to the Investors, prior to its use.

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

364 (b) Acquired CVP Water

365 (i) An Investor or a CVP contractor who has
366 invested in the Expansion Project or under separate agreement with an Investor in the Project
367 that has approved unused rescheduled Project Water in the Historic Reservoir may move their
368 remaining unused amount into the Investor share of the Expanded Reservoir, Provided, that this
369 action will not expand the Investor share of the Expanded Reservoir.

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

373 (iii) Reclamation may use Acquired CVP Water
374 to meet CVP purposes only after all available federal supplies in the Historic Reservoir have
375 been used by Reclamation to meet CVP needs; and

376 (1) Reclamation may utilize this
377 Acquired Project Water in coordination and consultation with the Authority and will repay the
378 water in the following Year on a one-to-one basis unless specifically identified to meet Public
379 Health and Safety water supply needs in the subsequent Year.

380 (iv) Acquired Project Water will be subject to
381 the M&I Water Shortage Policy.

382 (c) Project Water

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

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

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

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

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

399 (e) Points of Delivery

400 (i) Any Project Water, as defined by this Agreement, will be delivered
401 at the point(s) of diversion as specified in the Investor’s Project Water Service/Repayment
402 Contract.

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

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

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

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

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

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

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

427 (iii) Provide for a dispute resolution process.

428 **EXISTING CONTRACTS**

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

431 **DISPUTE RESOLUTION**

432 6. Should any dispute arise concerning storage of water by the Authority and the
433 Investors in the Expanded Reservoir, between the authority, and/or the Investors, which the
434 Authority and/or the Investors concludes cannot be resolved through negotiations with the other
435 party(ies) to the dispute, the Authority and/or the Investors shall provide its final position with
436 respect to such dispute to the other party(ies) thereto in writing and to the Contracting Officer
437 requesting a determination of the dispute. Within sixty (60) days after such final position is
438 provided, or such other reasonable date as may be agreed upon by the Authority and/or the
439 Investors and the Contracting Officer, the Contracting Officer will issue a written determination
440 regarding the dispute. The Contracting Officer's determination shall be accepted by the
441 Authority and/or the Investors as final and conclusive and the Authority and the Investors shall
442 promptly comply with said decision until the same is stayed, reversed, or modified by a decision
443 of a court of competent jurisdiction.

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

445 7. The waiver by either Party to this Agreement as to any non-compliance with any
446 provision of this Agreement shall not be construed as a waiver of any other non-compliance with
447 any provision of this Agreement or as authority of the other Party to continue such non-

448 compliance with any provision of this Agreement or to make, do, or perform, or not make, do, or
449 perform, as the case may be, any act or thing which would constitute non-compliance with any
450 provision of this Agreement.

451 **NOTICES**

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

458
459 **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

460 9. The expenditure or advance of any money or the performance of any obligation of
461 the United States under this Agreement shall be contingent upon appropriation or allotment of
462 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
463 obligations under this Agreement. No liability shall accrue to the United States in case funds are
464 not appropriated or allotted.

465 **OFFICIALS NOT TO BENEFIT**

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

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

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

473 **BOOKS, RECORDS, AND REPORTS**

474 12. The Contractor shall establish and maintain accounts and other books and records
475 pertaining to administration of the terms and conditions of this Agreement, including the
476 Contractor's financial transactions; water supply data; project operation, maintenance, and
477 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
478 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
479 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
480 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
481 regulations, each party to this Agreement shall have the right during office hours to examine and

482 make copies of the other party’s books and records relating to matters covered by this
483 Agreement.

484 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

490 **PROTECTION OF WATER AND AIR QUALITY**

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

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

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

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

508 **WATER CONSERVATION**

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

513 **EQUAL EMPLOYMENT OPPORTUNITY**

514 16. The following language is required by Executive Order No. 11246 of September
515 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

531 (c) The Contractor will not discharge or in any other manner discriminate
532 against any employee or applicant for employment because such employee or applicant has
533 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
534 employee or applicant. This provision shall not apply to instances in which an employee who has
535 access to the compensation information of other employees or applicants as a part of such
536 employee's essential job functions discloses the compensation of such other employees or
537 applicants to individuals who do not otherwise have access to such information, unless such
538 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
539 proceeding, hearing, or action, including an investigation conducted by the employer, or is
540 consistent with the Contractor's legal duty to furnish information.

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

547 (e) The Contractor will comply with all provisions of Executive Order No.
548 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
549 Labor.

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

555 (g) In the event of the Contractor's noncompliance with the nondiscrimination
556 clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may

557 be canceled, terminated or suspended in whole or in part and the Contractor may be declared
558 ineligible for further Government contracts in accordance with procedures authorized in
559 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
560 remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule,
561 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

562 (h) The Contractor will include the provisions of paragraphs (a) through (h) in
563 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
564 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
565 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
566 Contractor will take such action with respect to any subcontract or purchase order as may be
567 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
568 for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or
569 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
570 Contractor may request the United States to enter into such litigation to protect the interests of
571 the United States.

572 **COMPLIANCE WITH CIVIL RIGHTS**

573 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
574 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
575 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
576 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
577 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
578 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
579 Interior and/or Bureau of Reclamation.

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

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

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

597

CERTIFICATION OF NONSEGREGATED FACILITIES

598 18. The Contractor hereby certifies that it does not maintain or provide for its
599 employees any segregated facilities at any of its establishments and that it does not permit its
600 employees to perform their services at any location under its control where segregated facilities
601 are maintained. It certifies further that it will not maintain or provide for its employees any
602 segregated facilities at any of its establishments and that it will not permit its employees to
603 perform their services at any location under its control where segregated facilities are
604 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
605 Employment Opportunity clause in this Agreement. As used in this certification, the term
606 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
607 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
608 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
609 facilities provided for employees which are segregated by explicit directive or are in fact
610 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
611 disability, or otherwise. The Contractor further agrees that (except where it has obtained identical
612 certifications from proposed subcontractors for specific time periods) it will obtain identical
613 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
614 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
615 will retain such certifications in its files; and that it will forward the following notice to such
616 proposed subcontractors (except where the proposed subcontractors have submitted identical
617 certifications for specific time periods):

618 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
619 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

625 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

634 **AGREEMENT DRAFTING CONSIDERATIONS**
635 20. This Agreement has been negotiated and reviewed by the parties hereto, each of
636 whom is sophisticated in the matters to which this Agreement pertains. Articles _ through _ of
637 this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall
638 be considered to have drafted the stated articles.

639
640
641
642

643
644 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day
645 and year first above written.

646

647 THE UNITED STATES OF AMERICA

648 By: _____
649 Regional Director
650 Interior Region 10: California-Great Basin
651 Bureau of Reclamation
652

653 San Luis Delta-Mendota Canal Authority
654 (SEAL)

655 By: _____
656 Chair, Board of Directors

657 Attest:

658 _____
659 Secretary
660