

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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OF THE FEDERALLY ADMINSTERED SAN LUIS RESERVOIR**

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 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
17 Project (“CVP”) for diversion, storage, carriage, and distribution of waters of the Sacramento  
18 River, the American River, the Trinity River, and the San Joaquin River and their tributaries for  
19 irrigation and other beneficial uses to serve CVP purposes; and

20 [2<sup>nd</sup>] 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 [3<sup>rd</sup>] WHEREAS, the San Luis Act of 1960 (Public Law 86 – 488, 74 Stat. 156)  
24 authorized the Secretary of the Interior to construct, operate, and maintain an afterbay, forebay,  
25 conveyance facilities, and dam and Reservoir for the joint use by the State of California and the  
26 United States, and as provided in Section 2 of the Act, the Secretary was authorized to enter into  
27 an agreement with the State of California to provide for the coordinated operation of the San  
28 Luis Unit, which resulted in a 1961 Joint Coordination Agreement and subsequent amendatory  
29 and supplemental agreements of 1972 and 1997; and

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

35 [5<sup>th</sup>] WHEREAS, consistent with the San Luis Act of 1960, Reclamation and DWR  
36 share responsibility for the costs of operation, maintenance, and replacement of B.F. Sisk Dam  
37 and San Luis Reservoir, consistent with the 1961 Agreement Between the United States of  
38 America and The Department of Water Resources of the State of California for the Operation of  
39 the San Luis Unit and all supplements and amendments, Contract No. 14-06-200-9755 (1961  
40 Agreement); and

41 [6<sup>th</sup>] WHEREAS, this Agreement is not intended to alter or change the joint  
42 coordination agreements between the United States and the State of California, except as may be  
43 deemed necessary by Reclamation in consultation with the State of California to accommodate  
44 the Expansion Project and account for any changed operation or maintenance of the Expanded  
45 Reservoir and raised dam; and

46 [7<sup>th</sup>] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary  
47 maintenance work for the B.F. Sisk Safety of Dams Modification Project to improve the safety  
48 of the continued operation and maintenance of aforementioned dam; and

49 [8<sup>th</sup>] 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 to  
52 determine additional project benefits and to ensure that it is in the best interest of the United  
53 States; and

54 [9<sup>th</sup>] WHEREAS, in addition to the construction to address the B.F. Sisk Safety of  
55 Dams Modification Project work, in accordance with the Reclamation Safety of Dams Act of  
56 1978 (Public Law 95-578, 92 Stat. 2471) and 43 U.S.C. § 509 b to develop additional project

57 benefits, B.F. Sisk Dam Safety of Dams Modification Report, in December 2020, the Expansion  
58 Project was determined to be feasible; and

59 [10<sup>th</sup>] WHEREAS, following the finding of feasibility, in accordance with §4007 of the  
60 Water Infrastructure and Improvement for the Nation Act (WIIN) (Public Law 114-322), on  
61 October 20, 2023, Congress authorized construction and associated funding for the B.F. Sisk  
62 Dam Raise and Reservoir Expansion Project; and

63 [11<sup>th</sup>] WHEREAS, in accordance with Section 4007(e) of the WIIN Act, which  
64 provides “[s]ubject to compliance with State water rights laws, the right to use capacity of a  
65 federally owned storage project... Shall be allocated in such a manner as may be mutually  
66 agreed to by the Secretary of the Interior and each party to the agreement,” the Parties agree that  
67 this Agreement, as may be amended, provides for the mutually agreeable use of the Expanded  
68 Reservoir to the extent consistent with Federal Law; and

69 [12<sup>th</sup>] WHEREAS, Reclamation signed a Record of Decision for the Environmental  
70 Impact Statement/Report (EIS/R), entitled B.F. Sisk Dam Raise and Reservoir Expansion  
71 Project, selecting the Dam Raise Alternative; and

72 [13<sup>th</sup>] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority  
73 agree to enter into this Agreement for up to 50% federal share of the costs of the Expansion  
74 Project including, but not limited to, planning, design, and construction, and as further defined in  
75 this Agreement; and

76 [14<sup>th</sup>] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United  
77 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project  
78 Activity Agreement, as may be amended or supplemented, representing Investors who will

79 collectively share in the costs of the Expansion Project, desire to use the Expansion Project in a  
80 such a manner as may be mutually agreeable to the Parties hereto; and

81 [15<sup>th</sup>] WHEREAS, other agreements and/or contracts necessary for commencing design,  
82 construction, and/or operation of the Expanded Reservoir may be necessary and may be  
83 incorporated by amendment of this Agreement, and may include, but are not limited to, a  
84 contributed funds agreement providing for the contribution of funds from Federal cost share  
85 partners (§4007(b)(3)(b) and §4011(e)(2)); an O&M Agreement, a repayment contract providing  
86 for repayment of reimbursable obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate, a  
87 Spend Plan, and a Coordination Agreement; and which may require further delegation of  
88 authority from the Commissioner of Reclamation to negotiate and make a part of this  
89 Agreement; and

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

94 **DEFINITIONS**

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

97 (a) “Acquired Project Water” shall mean Project Water acquired by an  
98 Investor, from another CVP Water Service/Repayment Contractor, Sacramento River Settlement  
99 Contractor, or San Joaquin River Exchange Contractor, including Project Water acquired via  
100 transfer, exchange, or forbearance agreement.

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

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

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

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

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

114 (g) “Expansion Project” shall mean the B.F. Sisk Dam Raise and Reservoir  
115 Expansion Project, consistent with the Record of Decision, dated October 20, 2023, as may be  
116 amended or supplemented, which would raise B.F. Sisk Dam an additional ten feet which will  
117 provide an additional estimated 130 thousand acre feet (TAF) of storage in San Luis Reservoir.

118 (h) “Federal Share of Historic Reservoir” shall mean the storage volume of  
119 966 TAF in the Historic Reservoir.

120 (i) “Investor Share of Expanded Reservoir” shall mean the storage volume of  
121 the Expanded Reservoir commensurate with the level of investment in the Expansion Project.

122 (j) “Historic Reservoir” shall mean the storage volume of 2.028 Million  
123 Acre-Feet (MAF) in San Luis Reservoir.

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

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

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

133 (n) “Operation and Maintenance Agreement” or “O&M Agreement” shall  
134 mean the agreement between the United States and the Authority providing for the operation of  
135 the Expansion Project.

136 (o) “Parties” shall mean Reclamation on behalf of the United States and the  
137 Authority on behalf of the Investors.

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

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

144 (r) “Rescheduled Project Water” shall mean [TBD].

145 (s) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded  
146 Reservoir.

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

150 (u) “Spend Plan” shall mean the plan provided for in subarticle 3(e) of this  
151 Agreement.

152 (v) “Substantial Completion” shall have the same meaning as defined in FAC  
153 01-05 as amended or supplemented.

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

156 (x) “Year” shall mean the period from and including March 1 of each Calendar  
157 Year through the last day of February of the following Calendar Year.

158 **TERM OF AGREEMENT**

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

161           (b)     The Contracting Officer may terminate this Agreement at any time before  
162 the expiration of its term whenever the Contracting Officer determines that the Authority is in  
163 substantial violation of the Agreement as provided in this Article 2(b) or otherwise in violation  
164 of federal law or Reclamation Policy; provided, that prior to the effective date of any such  
165 termination, the Contracting Officer shall first notify the Authority in writing of, the specific  
166 purported deficiencies of the Authority in carrying out the terms and conditions of this  
167 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as  
168 expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If  
169 after the designated representative of the Authority has met with the Contracting Officer or his or  
170 her designated representative and attempt in good faith and with the use of best efforts to resolve  
171 any dispute arising from the purported deficiency an agreement is not reached, the Contracting  
172 Officer may issue a notice of proposed termination, which includes the specific deficiencies of  
173 the Authority's performance under this Agreement. The Authority shall have at least ninety (90)  
174 days from receipt of the written notice of proposed termination to correct all deficiencies referred  
175 to in said written notice. Any termination pursuant to this Article shall be subject to the rights  
176 and obligations of the Parties as more specifically set forth in this Agreement.

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

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

185 **COST SHARE**

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

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

193 (1) Upon the determination of “Substantial Completion” of  
194 construction of the Expansion Project, Reclamation and the Authority will meet and confer to  
195 determine the final costs of the Expansion Project and will determine final storage benefits based  
196 on mutual agreement. The final storage benefits attributable to the Parties will be documented in  
197 an exhibit to this Agreement.

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

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

203                   (1)     The Parties have reviewed the Expansion Project costs incurred by  
204 the Authority and the Investors and Reclamation prior to the effective date of this Agreement.  
205 The Parties acknowledge and agree that the Investors have incurred costs totaling \$ \_\_\_\_\_  
206 and Reclamation has incurred costs totaling \$ \_\_\_\_\_, which allowable amounts will be credited  
207 to each Party’s cost share obligation under this Agreement.

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

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

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

224 (5) Permitting Costs: Additional permitting actions prior to  
225 construction of the Expansion Project and prior to declaring the Expansion Project “Substantially  
226 Complete” may be required. The Parties will jointly determine, as appropriate, the appropriate  
227 Party to obtain any necessary permit(s), and the appropriate cost share for the permitting actions.

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

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

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

250 (9) Other Design and Construction Costs: Either party may pay for  
251 part or all of the remaining non-embankment design and construction costs of associated  
252 facilities affected or involved with the Expansion Project including, but not limited to, recreation  
253 facilities, power improvements to existing facilities, improvements to pumps, transportation, and  
254 other various components of the Expansion Project.

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

261 (d) There may be times when Reclamation provides funds to the Authority.  
262 These funds will be provided through a financial assistance agreement as provided for in  
263 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be  
264 considered part of the cost of this Expansion Project and shared in accordance with Article  
265 3(a)(1).

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

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

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

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

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

287 (h) A final accounting of Expansion Project benefits will be necessary to  
288 determine final storage benefits of the Expansion Project and the allocation to Reclamation and  
289 the Authority. At the time of final accounting, Reclamation, in coordination with the Authority,  
290 will assess the Expansion Project costs and make a determination of which Expansion Project  
291 costs are reimbursable and which Expansion Project costs are non-reimbursable.

292 **MANAGEMENT OF EXPANDED RESERVOIR**

293 4. Responsibility for the costs of operation, maintenance, and replacement of B.F.  
294 Sisk Dam and San Luis Reservoir will continue to be governed by agreements between the  
295 United States and the State of California; the Authority and the Investors shall neither execute  
296 nor be a party to any agreement with the State of California for the operation and maintenance of  
297 the B.F. Sisk Dam and the Historic Reservoir or the Expanded Reservoir.

298 (a) The Parties will draft and finalize an O&M Agreement for the Expansion  
299 Project, including plans to cover the costs for the operations and maintenance resulting from the  
300 Expansion Project, prior to the first entry of any water subject to this Agreement into any CVP  
301 facilities. All future operation and maintenance costs associated with the Expansion Project will  
302 be commensurate to each Party's final investment in accordance with Article 3(a)(1) of this  
303 Agreement.

304 (b) Nothing in this Agreement shall imply or convey any rights or process to  
305 the Authority, the Investors, or their assignees for rights or privileges to water or operations in  
306 the Federal Share of the Expanded Reservoir or the Historic Reservoir and the Authority agrees  
307 that it shall not seek these rights outside of this Agreement.

308 (c) Expanded Project Storage

309 (1) The Parties agree, subject to the terms of this Agreement, that no  
310 Project Water will be used to fill the Expanded Reservoir until such time as the Historic  
311 Reservoir is filled, except as otherwise provided for in this Agreement.

312 (2) The Parties agree that Reclamation and the California Department  
313 of Water Resources retain the discretion of the operations of the Historic Reservoir and any  
314 water pumped into the Historic Reservoir, and Reclamation has discretion of the operations of  
315 the Expanded Reservoir, consistent with existing laws, agreements, and obligations and pursuant  
316 to the terms of this Agreement.

317 (3) The Parties agree that available capacity to convey water into the  
318 Expanded Reservoir will be utilized on a proportional and equitable basis.

319 (4) Federal Share: The management of any water in the Federal Share  
320 of the Expanded Reservoir is at the sole discretion of Reclamation and will be managed in such a  
321 way to be consistent with State and Federal law and existing and future agreements, guidelines,  
322 and programs for Federal benefits.

323 (5) Investor Share: The Investor Share of the Expanded Reservoir will  
324 be commensurate with the final allocated costs for the Expansion Project. The Investors agree to  
325 use the Investor Share of the Expanded Reservoir consistent with the terms of this Agreement,  
326 and the Parties agree that the Investors possess the ability to partner with non-Investor parties  
327 regarding the use, marketing, and/or sale of space within the Investor Share of the Expanded  
328 Reservoir and or the storage of water in the Investor Share of the Expanded Reservoir. Any  
329 water in the Investor Share of the Expanded Reservoir will not be displaced by filling of the  
330 Historic Reservoir. The following water types may be stored in the Investor share of the

331 Expanded Reservoir and used at the discretion of the Investors subject to the terms of this  
332 Agreement:

333 (i) Non-Project Water

334 (a) With the exception of State Water Project water that  
335 may already exist in San Luis Reservoir and/or is conveyed through the State Water Project or  
336 under agreement with Reclamation, and Non-Project Water that may already exist in the Historic  
337 Share of San Luis Reservoir, Non-Project Water is subject to a contract for the use of excess  
338 conveyance capacity in Federal facilities, pursuant to the Warren Act (Act of February 21, 1911  
339 (36 Stat. 925)) in order to convey Non-Project Water to or from San Luis Reservoir. The  
340 approval of any such Warren Act contract will not be unreasonably withheld.

341 (b) Storage of Non-Project Water in the Investor Share  
342 of the Expanded Reservoir will not require a Warren Act Contract. However, any water that is  
343 stored in the Investor share of the Expanded Reservoir that may be moved into and accounted for  
344 in the Historic Reservoir will require a Warren Act Contract.

345 (c) In order to store Non-Project Water in the Investor  
346 Share of the Expanded Reservoir, the Investors may displace Project Water stored in the Investor  
347 Share of the Expanded Reservoir.

348 (d) For the purpose of this Agreement, San Joaquin  
349 River Restoration water recaptured consistent with permits issued by the State Water Resources  
350 Control Board, if acquired by an Investor or a non-Investor party through agreement with an  
351 Investor, will be treated as Non-Project Water and may be storable in the Investor Share of the  
352 Expanded Reservoir.

353 (e) The Parties agree that the Non-Project Water, as  
354 defined in this Agreement, will not be subject to the San Luis Rescheduling Guidelines and will  
355 not spill, and Reclamation will not use Non-Project Water to meet CVP purposes until all  
356 available federal supplies have been used by Reclamation to meet CVP purposes, unless the  
357 Parties first mutually agree to water or monetary compensation, subject to appropriations, or a  
358 combination thereof, prior to its use.

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

363 (ii) Acquired Project Water

364 (a) An Investor, or another CVP contractor under  
365 separate agreement with an Investor, that has approved Rescheduled Project Water in the  
366 Historic Reservoir, may move their remaining Rescheduled Project Water into the Investor Share  
367 of the Expanded Reservoir; Provided, that this action will not expand the Investor Share of the  
368 Expanded Reservoir.

369 (b) The Parties agree that the Acquired Project Water as  
370 defined by this Agreement will not be subject to the San Luis Rescheduling Guidelines, and will  
371 not spill.

372 (c) In order to store Acquired Project Water in the  
373 Investor Share of the Expanded Reservoir, the Investors may displace Project Water stored in the  
374 Investor Share of the Expanded Reservoir.

375 (d) The Parties agree that Reclamation will not use  
376 Acquired Project Water to meet CVP purposes **es until all available federal supplies have been used**  
377 **by Reclamation to meet CVP purposes, unless the Parties first mutually agree to water or**  
378 **monetary compensation, subject to appropriations, or a combination thereof, prior to its use.**

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

381 (iii) Project Water

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

386 (b) **[BOR to draft language about making 3f water**  
387 **available for storage in Investor Share]**

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

391 (d) Any Project Water, as defined by this sub-article,  
392 that is stored in the Investor Share of the Expanded Reservoir may be used by Reclamation at  
393 any time if needed to meet CVP purposes, after all other available federal supplies have been  
394 used by Reclamation to meet CVP 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 delivery as specified in the applicable Water Service/Repayment Contract.

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

405 (f) Operation and Maintenance Costs of the San Luis Reservoir – As a result  
406 of the Expanded Reservoir, Reclamation may have an increased share of the cost of the operation  
407 and maintenance of the B.F. Sisk Dam and San Luis Reservoir. The Parties agree that costs will  
408 be paid consistent with existing laws, agreements, and policy, as may be amended or superseded.  
409 Further, the Authority agrees it will specifically pay for operation and maintenance costs  
410 associated with the Investor Share of the Expanded Reservoir; the details regarding such  
411 payment and costs will be defined in an O&M Agreement, which will be an Exhibit to this  
412 Agreement.

413 (g) Coordination – Prior to the operation of the Expanded Reservoir,  
414 Reclamation and the Authority will develop a Coordination Agreement to coordinate and  
415 communicate and define roles and responsibilities prior to the storage of water in the Expanded

416 Reservoir, which will be an Exhibit to this Agreement. The Coordination Agreement will,  
417 among other things:

- 418 (i) Define the frequency of coordination between the Parties;
- 419 (ii) Establish a Reclamation approved accounting methodology and  
420 system of accounting for water in the investor share of the Expanded Reservoir;
- 421 (iii) Provide for a dispute resolution process; and
- 422 (iv) Provide for a Water Master/Manager. The Parties agree that a  
423 Water Master/Manager will be provided and paid for by the Authority who will coordinate with  
424 Reclamation regarding the management of any water moving into, stored in, or moving out of  
425 the Investor Share of the expanded Reservoir, who will account for the water in the Investor  
426 Share of Expanded Reservoir, and who will be responsible for the provisional data and  
427 coordinating with Reclamation on reconciliation at the end of the contract year and prior to  
428 initial allocations of the following Year.

429 **EXISTING CONTRACTS**

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

432 **DISPUTE RESOLUTION**

433 6. Should any dispute arise concerning any provisions of this Agreement, or the  
434 Parties' rights and obligations thereunder, the Parties shall meet and confer in an attempt to  
435 resolve the dispute. Prior to the Authority commencing any legal action, or the Contracting  
436 Officer referring any matter to the Department of Justice, the Party shall provide to the other  
437 Party thirty (30) days' written notice of the intent to take such action; *Provided, That such notice*

438 shall not be required where a delay in commencing an action would prejudice the interests of the  
439 Party that intends to file suit. During the thirty (30)-day notice period, the Parties shall meet and  
440 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is  
441 intended to waive or abridge any right or remedy that the Authority or the United States may  
442 have.

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

444 7. The waiver by either Party to this Agreement as to any non-compliance with any  
445 provision of this Agreement shall not be construed as a waiver of any other non-compliance with  
446 any provision of this Agreement or as authority of the other Party to continue such non-  
447 compliance with any provision of this Agreement or to make, do, or perform, or not make, do, or  
448 perform, as the case may be, any act or thing which would constitute non-compliance with any  
449 provision of this Agreement.

450 **MODIFICATIONS**

451 8. Each Party reserves the right to propose modifications to this Agreement at any  
452 time while it is in effect. If either Party proposes any such modifications, the Parties shall  
453 promptly attempt to negotiate in good faith an amendatory Agreement to accommodate the  
454 proposed modifications.

455 **OPINIONS AND DETERMINATIONS**

456 9. (a) Where the terms of this Agreement provide for actions to be based upon the  
457 opinion or determination of either party to this Agreement, said terms shall not be construed as  
458 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
459 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly

460 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
461 or unreasonable opinion or determination. Each opinion or determination by either Party shall be  
462 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall  
463 affect or alter the standard of judicial review applicable under Federal law to any opinion or  
464 determination implementing a specific provision of Federal law embodied in statute or  
465 regulation.

466 (b) The Contracting Officer shall have the right to make determinations necessary to  
467 administer this Agreement that are consistent with the provisions of this Agreement, the laws of  
468 the United States and of the State of California, and the rules and regulations promulgated by the  
469 Secretary. Such determinations shall be made in consultation with the Authority to the extent  
470 reasonably practicable.

471 **NOTICES**

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

478  
479 **CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS**

480 11. The expenditure or advance of any money or the performance of any obligation of  
481 the United States under this Agreement shall be contingent upon appropriation or allotment of  
482 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
483 obligations under this Agreement. No liability shall accrue to the United States in case funds are  
484 not appropriated or allotted.

485 **OFFICIALS NOT TO BENEFIT**

486 12. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
487 the Contractor shall benefit from this Agreement other than as a water user or landowner in the  
488 same manner as other water users or landowners.

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

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

493 **BOOKS, RECORDS, AND REPORTS**

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

504 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

510 **PROTECTION OF WATER AND AIR QUALITY**

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

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

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

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

528 **WATER CONSERVATION**

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

533 **EQUAL EMPLOYMENT OPPORTUNITY**

534 18. The following language is required by Executive Order No. 11246 of September  
535 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

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

561 (d) The Contractor will send to each labor union or representative of workers  
562 with which he has a collective bargaining agreement or other contract or understanding, a notice,

563 to be provided by the agency Contracting Officer, advising the labor union or workers'  
564 representative of the Contractor's commitments under section 202 of Executive Order No. 11246  
565 of September 24, 1965, and shall post copies of the notice in conspicuous places available to  
566 employees and applicants for employment.

567 (e) The Contractor will comply with all provisions of Executive Order No.  
568 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
569 Labor.

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

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

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

592 **COMPLIANCE WITH CIVIL RIGHTS**

593 19. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
594 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
595 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
596 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
597 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
598 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
599 Interior and/or Bureau of Reclamation.

600 (b) These statutes prohibit any person in the United States from being  
601 excluded from participation in, being denied the benefits of, or being otherwise subjected to

602 discrimination under any program or activity receiving financial assistance from the Bureau of  
603 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
604 Agreement, the Contractor agrees to immediately take any measures necessary to implement this  
605 obligation, including permitting officials of the United States to inspect premises, programs, and  
606 documents.

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

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

#### 617 **CERTIFICATION OF NONSEGREGATED FACILITIES**

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

#### 638 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR 639 CERTIFICATIONS OF NONSEGREGATED FACILITIES

640 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
641 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

642 Opportunity clause. The certification may be submitted either for each subcontract or for all  
643 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
644 making false statements in offers is prescribed in 18 U.S.C. § 1001.

645 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

654 **AGREEMENT DRAFTING CONSIDERATIONS**

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

659  
660  
661  
662

663  
664 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day  
665 and year first above written.

666  
667 THE UNITED STATES OF AMERICA

668 By: \_\_\_\_\_  
669 Regional Director  
670 Interior Region 10: California-Great Basin  
671 Bureau of Reclamation  
672

673 San Luis & Delta-Mendota Water Authority  
674 (SEAL)

675 By: \_\_\_\_\_  
676 Chair, Board of Directors  
677

677 Attest:

678 \_\_\_\_\_  
679 Secretary  
680