

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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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 (“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 [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, 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 [4th] 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 [5th] 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 [6th] WHEREAS,-The CVP and State Water Project share responsibility for meeting
42 Sacramento-San Joaquin Delta water quality standards and export capacity when exports are
43 constrained by regulatory actions as specified in the Coordinated Operations Agreement (COA)
44 between Reclamation and DWR as amended in 2018; and

45 [7th] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary
46 maintenance work for the B.F. Sisk Safety of Dams Modification Project to improve the safety
47 of the continued operation and maintenance of aforementioned dam; and

48 [8th] WHEREAS, consistent with Reclamation's Directives and Standards at CMP 09-
49 02 and FAC 06-05, Reclamation is authorized to assess the feasibility of increasing San Luis
50 Reservoir storage capacity in conjunction with the Safety of Dams (SOD) improvements to
51 determine additional project benefits and to ensure that it is in the best interest of the United
52 States; and

53 [9th] WHEREAS, in addition to the construction to address the B.F. Sisk Safety of
54 Dams Modification Project work, in accordance with the Reclamation Safety of Dams Act of
55 1978 (Public Law 95-578, 92 Stat. 2471) and 43 U.S.C. § 509 b to develop additional project
56 benefits, B.F. Sisk Dam Safety of Dams Modification Report, in December 2020, the Expansion
57 Project was determined to be feasible; and

58 [10th] WHEREAS, following the finding of feasibility, in accordance with §4007 of the
59 Water Infrastructure and Improvement for the Nation Act (WIIN) (Public Law 114-322), on
60 October 20, 2023, Congress authorized construction and associated funding for the B.F. Sisk
61 Dam Raise and Reservoir Expansion Project; and

62 [11th] WHEREAS, in accordance with Section 4007(e) of the WIIN Act, which
63 provides “[s]ubject to compliance with State water rights laws, the right to use capacity of a
64 *federally owned storage project... shall be allocated in such a manner as may be mutually*
65 *agreed to by the Secretary of the Interior and each party to the agreement,”* the Parties agree that
66 this Agreement, as may be amended, provides for the mutually agreeable use of the Expanded
67 Reservoir to the extent consistent with Federal Law; and

68 [12th] WHEREAS, Reclamation signed a Record of Decision for the Environmental
69 Impact Statement/Report (EIS/R), entitled B.F. Sisk Dam Raise and Reservoir Expansion
70 Project, selecting the Dam Raise Alternative; and

71 [13th] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority
72 agree to enter into this Agreement for up to 50% federal share of the costs of the Expansion
73 Project including, but not limited to, planning, design, and construction, and as further defined in
74 this Agreement; and

75 [14th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
76 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project
77 Activity Agreement, as may be amended or supplemented, representing Investors who will
78 collectively share in the costs of the Expansion Project, desire to use the Expansion Project in a
79 such a manner as may be mutually agreeable to the Parties hereto; and

80 [15th] WHEREAS, other agreements and/or contracts necessary for commencing design,
81 construction, and/or operation of the Expanded Reservoir may be necessary and may be
82 incorporated by amendment of this Agreement, and may include, but are not limited to, a
83 contributed funds agreement providing for the contribution of funds from Federal cost share
84 partners (§4007(b)(3)(b)); and §4011(e)(2)); an O&M Agreement, and a repayment contract
85 providing for repayment of reimbursable obligations (§4007(b)(3)(c) and 4011(e)(2)), as
86 appropriate; , a Spend Plan, and a Coordination Agreement; and which may require further
87 delegation of authority from the Commissioner of Reclamation to negotiate and make a part of
88 this Agreement; and

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

93 **DEFINITIONS**

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

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

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

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

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

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

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

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

116 (h) “Federal Share of Historic Reservoir” shall mean the storage volume of
117 966 TAF in the Historic Reservoir.

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

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

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

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

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

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

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

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

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

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

143 (s) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
144 Reservoir.

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

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

150 (v) “Substantial Completion” shall have the same meaning as defined in FAC
151 01-05 as amended or supplemented.

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

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

156 **TERM OF AGREEMENT**

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

159 (b) The Contracting Officer may terminate this Agreement at any time before
160 the expiration of its term whenever the Contracting Officer determines that the Authority is in
161 substantial violation of the Agreement as provided in this Article 2(b) or otherwise in violation
162 of federal law or Reclamation Policy; provided, that prior to the effective date of any such
163 termination, the Contracting Officer shall first notify the Authority in writing of, the specific
164 purported deficiencies of the Authority in carrying out the terms and conditions of this

165 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as
166 expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If
167 after the designated representative of the Authority has met with the Contracting Officer or his or
168 her designated representative and attempt in good faith and with the use of best efforts to resolve
169 any dispute arising from the purported deficiency an agreement is not reached, the Contracting
170 Officer may issue a notice of proposed termination, which includes the specific deficiencies of
171 the Authority's performance under this Agreement. The Authority shall have at least ninety (90)
172 days from receipt of the written notice of proposed termination to correct all deficiencies referred
173 to in said written notice;. Any termination pursuant to this Article shall be subject to the rights
174 and obligations of the Parties as more specifically set forth in this Agreement.

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

183 This Agreement may be modified, amended, or terminated upon mutual
184 agreement of the Parties in writing, All duties and obligations of the Parties under this
185 Agreement will cease upon termination except as to any provisions that expressly survive the
186 termination of the Agreement.

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COST SHARE

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

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

(1) Upon the determination of “Substantial Completion” of construction of the Expansion Project, Reclamation and the Authority will meet and confer to determine the final costs of the Expansion Project and will determine final storage benefits based on mutual agreement within a reasonable time frame at the exclusive discretion of Reclamation. The final storage benefits attributable to the Parties will be documented in an exhibit to this Agreement.

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

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

(1) The Parties have reviewed the Expansion Project costs incurred by the Authority and the Investors and Reclamation prior to the effective date of this Agreement. The Parties acknowledge and agree that the Investors have incurred costs totaling \$ _____

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

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

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

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

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

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

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

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

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

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

264 (d) There may be times when Reclamation provides funds to the Authority.
265 These funds will be provided through a financial assistance agreement as provided for in
266 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be
267 considered part of the cost of this Expansion Project and shared in accordance with Article
268 3(a)(1).

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

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

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

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

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

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

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MANAGEMENT OF EXPANDED RESERVOIR

4. Responsibility for the costs of operation, maintenance, and replacement of B.F.

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

(a) The Parties will draft and finalize an OM&R Agreement for the Expansion

Project, including plans to cover the costs for the operations and maintenance resulting from the Expansion Project, prior to the first entry of any water subject to this Agreement into any CVP facilities. All future operation and maintenance costs associated with the Expansion Project will be commensurate to each Party’s final investment in accordance with Article 3(a)(1) of this Agreement.

(b) Nothing in this Agreement shall imply or convey any rights or process to

the Authority, the Investors or their assignees for rights or privileges to water or operations in the Federal Share of the Expanded Reservoir or the Historic Reservoir and the Authority agrees that it shall not seek these rights outside of this Agreement.

(c) Expanded Project Storage

(1) The Parties agree, subject to the terms of this Agreement, that no

Project Water will be used to fill the Expanded Reservoir until such time as the Historic Reservoir is filled, except as otherwise provided for in this Agreement.

(2) The Parties agree that Reclamation and the California Department

of Water Resources retain the sole discretion of the operations of the Historic Reservoir and any

318 water pumped into the Historic Reservoir, and Reclamation has sole discretion of the operations
319 of the Expanded Reservoir, consistent with existing laws, agreements, and obligations and
320 pursuant to the terms of this Agreement.

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

325 (4) Investor Share: The Investor Share of the Expanded Reservoir will
326 be commensurate with the final allocated costs for the Expansion Project. Investors agree to use
327 the Investor Share of the Expanded Reservoir consistent with the terms of this Agreement, and
328 the Parties agree that the Investors possess the ability to partner with non-Investor parties
329 regarding the use, marketing, and/or lease of capacity within the Investor Share of the Expanded
330 Reservoir and or the storage of water in the Investor Share of the Expanded Reservoir, Any
331 water in the Investor Share of the Expanded Reservoir will not be displaced by filling of the
332 Historic Reservoir, upon Reclamations approval and consistent with all State and Federal Law.
333 The Investors shall indemnify the United States, its officers, employees, and agents of damage or
334 claim of any nature whatsoever for which there is any legal responsibility derived from these
335 third-party agreements.

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

339 (i) Non-Project Water

340 (a) 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, and Non-Project Water that may already exist in
343 the Historic Reservoir, Non-Project Water is subject to a contract for the use of excess
344 conveyance capacity in Federal facilities, pursuant to the Warren Act (Act of February 21, 1911
345 (36 Stat. 925)), in order to convey Non-Project Water to or from San Luis Reservoir.

346 (b) 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 (c) In order to store Non-Project Water in the
351 Investor Share of the Expanded Reservoir, the Investors may displace Project Water stored in the
352 Investor Share of the Expanded Reservoir, provided that the Project Water is not subject to be
353 spilled.

354 (d) For the purpose of this Agreement and
355 consistent with the San Luis Rescheduling Guidelines, unless otherwise amended, San Joaquin
356 River Restoration water recaptured consistent with permits issued by the State Water Resources
357 Control Board, if acquired by an Investor or a non-Investor party through agreement with an
358 Investor, will be treated as having the same priority as Non-Project Water and may be storable in
359 the Investor Share of the Expanded Reservoir if acquired by an Investor.

360 (iv) The Parties agree that the Non-Project
361 Water, as defined in this Agreement, will not be subject to the San Luis Rescheduling

362 Guidelines, and will not spill, and Reclamation will not use Non-Project Water to meet CVP
363 purposes until all available federal supplies have been used by Reclamation to meet CVP
364 purposes, unless the Parties first mutually agree to water or monetary compensation, subject to
365 appropriations, or a combination thereof, prior to its use.

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

370 (ii) Acquired Project Water

371 (i) The Parties agree that the Acquired Project
372 Water as defined by this Agreement in the Investor Share of the Expanded Reservoir will not be
373 subject to the San Luis Rescheduling Guidelines; and will not spill.

374 (c) In order to store Acquired Project Water in the
375 Investor Share of the Expanded Reservoir, the Investors may displace Project Water stored in the
376 Investor Share of the Expanded Reservoir, provided that the Project Water is not subject to be
377 spilled.

378 (ii) Reclamation may use Acquired Project
379 Water to meet CVP purposes only after all available federal supplies in the Historic Reservoir
380 have been used by Reclamation to meet CVP needs; and

381 (1) Reclamation may utilize this
382 Acquired Project Water in coordination and consultation with the Authority and will repay the

383 water in the following Year on a one-to-one basis unless specifically identified to meet Public
384 Health and Safety water supply needs in the subsequent Year.

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

387 (iii) Project Water

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

392 (b) 3(f) Water: Water available to the Project:
393 Consistent with Article 3(f) of an Investor's Project Water Service/Repayment Contract, the
394 Contracting Officer will Make Water Available to Project Contractors capable of taking such
395 water in the following way:

396 a. Following the filling of the Historic
397 Reservoir, Reclamation will fill the Expanded Reservoir on a proportionate basis in accordance
398 with the Agreement.

399 i. Reclamation will fill the Expanded
400 Reservoir in this fashion until such a time that the Investor Share of the Expanded Reservoir is
401 full or the Investor share and the Federal Share of the Expanded Reservoir are full.

424 superseded. In coordination with the SCCAO, the Water Master/Manager will account for these
425 losses in the accounting for the Investor share.

426 (e) Points of Delivery

427 (i) Any Project Water, as defined by this Agreement, will be delivered
428 at the point(s) of delivery as specified in the applicable Water Service/Repayment Contract.

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

432 (f) Operation and Maintenance Costs of the San

433 Luis Reservoir – As a result of the Expanded Reservoir, Reclamation may have an increased
434 share of the cost of the operation and maintenance of the B.F. Sisk Dam and San Luis Reservoir.
435 The Parties agree that costs will be paid consistent with existing laws, agreements, and policy, as
436 may be amended or superseded. Further, the Authority agrees it will specifically pay for
437 operation and maintenance costs associated with the Investor Share of the Expanded Reservoir;
438 the details regarding such payment and costs will be defined in an O&M Agreement, which will
439 be an Exhibit to this Agreement.

440 (g) Coordination – Prior to the operation of the

441 Expanded Reservoir, Reclamation and the Authority will develop a Coordination Agreement to
442 coordinate and communicate and define roles and responsibilities prior to the storage of water in
443 the Expanded Reservoir, which will be an Exhibit to this Agreement. The Coordination
444 Agreement will, among other things:

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

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

448 (iii) Provide for a dispute resolution process.

449 (iv) Provide for a Water Master/Manager. The Parties agree that a
450 Water Master/Manager will be provided and paid for by the Authority who will coordinate with
451 Reclamation regarding the management of any water moving into, stored in, or moving out of
452 the Investor Share of the Expanded Reservoir, who will account for the water in the Investor
453 Share of Expanded Reservoir, and who will be responsible for the provisional data and
454 coordinating with Reclamation on reconciliation at the end of the contract year and prior to
455 initial allocations of the following Year.

456 **EXISTING CONTRACTS**

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

459 **DISPUTE RESOLUTION**

460 6. Should any dispute arise concerning any provisions of this Agreement, or the
461 Parties' rights and obligations thereunder, the Parties shall meet and confer in an attempt to
462 resolve the dispute. Prior to the Authority commencing any legal action, or the Contracting
463 Officer referring any matter to the Department of Justice, the Party shall provide to the other
464 Party thirty (30) days' written notice of the intent to take such action; *Provided, That* such notice
465 shall not be required where a delay in commencing an action would prejudice the interests of the
466 Party that intends to file suit. During the thirty (30)-day notice period, the Parties shall meet and
467 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is

468 intended to waive or abridge any right or remedy that the Authority or the United States may
469 have.

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

471 7. The waiver by either Party to this Agreement as to any non-compliance with any
472 provision of this Agreement shall not be construed as a waiver of any other non-compliance with
473 any provision of this Agreement or as authority of the other Party to continue such non-
474 compliance with any provision of this Agreement or to make, do, or perform, or not make, do, or
475 perform, as the case may be, any act or thing which would constitute non-compliance with any
476 provision of this Agreement.

477 **OPINIONS AND DETERMINATIONS**

478 9. (a) Where the terms of this Agreement provide for actions to be based upon
479 the opinion or determination of either party to this Agreement, said terms shall not be construed
480 as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
481 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
482 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
483 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
484 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
485 affect or alter the standard of judicial review applicable under Federal law to any opinion or
486 determination implementing a specific provision of Federal law embodied in statute or
487 regulation.

488 (b) The Contracting Officer shall have the right to make determinations
489 necessary to administer this Agreement that are consistent with the provisions of this Agreement,
490 the laws of the United States and of the State of California, and the rules and regulations

491 promulgated by the Secretary. Such determinations shall be made in consultation with the
492 Authority to the extent reasonably practicable.

493 **NOTICES**

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

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

502 9. The expenditure or advance of any money or the performance of any obligation of
503 the United States under this Agreement shall be contingent upon appropriation or allotment of
504 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
505 obligations under this Agreement. No liability shall accrue to the United States in case funds are
506 not appropriated or allotted.

507 **OFFICIALS NOT TO BENEFIT**

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

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

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

515 **BOOKS, RECORDS, AND REPORTS**

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

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COMPLIANCE WITH FEDERAL RECLAMATION LAWS

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

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PROTECTION OF WATER AND AIR QUALITY

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

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

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

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

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WATER CONSERVATION

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

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EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

573 (c) The Contractor will not discharge or in any other manner discriminate
574 against any employee or applicant for employment because such employee or applicant has
575 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
576 employee or applicant. This provision shall not apply to instances in which an employee who has
577 access to the compensation information of other employees or applicants as a part of such
578 employee's essential job functions discloses the compensation of such other employees or
579 applicants to individuals who do not otherwise have access to such information, unless such
580 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
581 proceeding, hearing, or action, including an investigation conducted by the employer, or is
582 consistent with the Contractor's legal duty to furnish information.

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

589 (e) The Contractor will comply with all provisions of Executive Order No.
590 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
591 Labor.

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

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

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

604 (h) The Contractor will include the provisions of paragraphs (a) through (h) in
605 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
606 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
607 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
608 Contractor will take such action with respect to any subcontract or purchase order as may be
609 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
610 for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or
611 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
612 Contractor may request the United States to enter into such litigation to protect the interests of
613 the United States.

614 **COMPLIANCE WITH CIVIL RIGHTS**

615 17. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
616 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
617 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
618 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
619 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
620 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
621 Interior and/or Bureau of Reclamation.

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

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

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

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CERTIFICATION OF NONSEGREGATED FACILITIES

640 18. The Contractor hereby certifies that it does not maintain or provide for its
 641 employees any segregated facilities at any of its establishments and that it does not permit its
 642 employees to perform their services at any location under its control where segregated facilities
 643 are maintained. It certifies further that it will not maintain or provide for its employees any
 644 segregated facilities at any of its establishments and that it will not permit its employees to
 645 perform their services at any location under its control where segregated facilities are
 646 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
 647 Employment Opportunity clause in this Agreement. As used in this certification, the term
 648 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
 649 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
 650 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
 651 facilities provided for employees which are segregated by explicit directive or are in fact
 652 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
 653 disability, or otherwise. The Contractor further agrees that (except where it has obtained identical
 654 certifications from proposed subcontractors for specific time periods) it will obtain identical
 655 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
 656 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
 657 will retain such certifications in its files; and that it will forward the following notice to such
 658 proposed subcontractors (except where the proposed subcontractors have submitted identical
 659 certifications for specific time periods):

660 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
 661 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

667 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

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AGREEMENT DRAFTING CONSIDERATIONS

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

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

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THE UNITED STATES OF AMERICA

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

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San Luis Delta-Mendota Canal Authority

(SEAL)

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By: _____
Chair, Board of Directors

Attest:

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Secretary