

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

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

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- Exhibit A: Contributed Funds Agreement
- Exhibit B: Spend Plan
- Exhibit C: Repayment Contract
- Exhibit D: Coordination Agreement
- Exhibit E: O&M Agreement
- Exhibit F: Final Storage Benefits

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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) (“CVPIA”); and the Water Infrastructure Improvement for the Nation
10 Act of 2016 (Public Law 114-322, 130 Stat. 1865); made between the UNITED STATES
11 BUREAU OF RECLAMATION hereinafter the United States or Reclamation, and represented

12 by the officer executing this Agreement, hereinafter referred to as the Contracting Officer, and
13 the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the
14 Authority, 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 (“SWP”) share responsibility for
42 coordinating operations of the CVP and SWP and for meeting certain Sacramento-San Joaquin
43 Delta water quality objectives and other operational requirements pursuant to the Coordinated
44 Operations Agreement (“COA”) 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 if there are additional project benefits and to ensure that it is in the best interest of the
52 United States; and

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

57 [10th] WHEREAS, following the finding of feasibility, in accordance with §4007 of the
58 Water Infrastructure and Improvement for the Nation Act (“WIIN”) (Public Law 114-322), on
59 October 20, 2023, Congress authorized construction and associated funding for the B.F. Sisk
60 Dam Raise and Reservoir Expansion Project; and

61 [11th] WHEREAS, in accordance with Section 4007(e) of the WIIN Act, which
62 provides “[s]ubject to compliance with State water rights laws, the right to use capacity of a
63 federally owned storage project... shall be allocated in such a manner as may be mutually
64 agreed to by the Secretary of the Interior and each party to the agreement,” the Parties agree that
65 this Agreement, as may be amended, provides for the mutually agreeable use of the Expanded
66 Reservoir to the extent consistent with Federal Law; and

67 [12th] WHEREAS, the Authority certified, and Reclamation signed, a Record of
68 Decision for the Environmental Impact Statement/Report (“EIS/R”), entitled B.F. Sisk Dam
69 Raise and Reservoir Expansion Project, selecting the Dam Raise Alternative; and

70 [13th] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority
71 agree to enter into this Agreement for up to 50% federal share of the costs of the Expansion
72 Project including, but not limited to, planning, design, and construction, and as further defined in
73 this Agreement; and

74 [14th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
75 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project
76 Activity Agreement, as may be amended or supplemented, representing Investors who will
77 collectively share in the costs and benefits of the Expansion Project, desire to use the Expansion
78 Project in a such a manner as may be mutually agreeable to the Parties hereto; and

79 [15th] WHEREAS, other agreements and/or contracts necessary for commencing design,
80 construction, and/or operation of the Expanded Reservoir may be necessary and may be
81 incorporated by amendment of this Agreement, and which may include, but are not limited to, a
82 contributed funds agreement providing for the contribution of funds from Federal cost share
83 partners (§4007(b)(3)(b)) and §4011(e)(2)), an O&M Agreement, a repayment contract providing
84 for repayment of reimbursable obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate, a
85 Spend Plan; and a Coordination Agreement; and which may require further delegation of
86 authority from the Commissioner of Reclamation to negotiate and make a part of this
87 Agreement; and

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

92 **DEFINITIONS**

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

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

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

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

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

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

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

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

115 (h) “Federal Share of Expanded Reservoir” shall mean the storage volume of
116 the Expanded Reservoir commensurate with the federal level of investment in the Expansion
117 Project.

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

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

122 (k) “Investor Share of Expanded Reservoir” shall mean the storage volume of
123 the Expanded Reservoir commensurate with the Investors’ level of investment in the Expansion
124 Project.

125 (l) “Investors” shall mean those entities and/or organizations that are
126 represented by the Authority pursuant to the B.F. Sisk Dam Raise and Reservoir Expansion
127 Project Activity Agreement and all supplements and amendments. It is recognized and agreed
128 that Investors are third-party beneficiaries to this Agreement.

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

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

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

138 (p) “Parties” shall mean Reclamation on behalf of the United States and the
139 Authority on behalf of the Investors.

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

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

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

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

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

154 (v) “Substantial Completion” shall have the same meaning as defined in FAC
155 01-05 as amended or supplemented.

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

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

160 **TERM OF AGREEMENT / REMEDIES UNDER AGREEMENT**

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

163 (b) The United States and the Authority jointly shall review this Agreement,
164 which review shall be performed at least every five (5) years. A more frequent review will occur
165 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The
166 review shall compare the relative success which each party has had in meeting its objectives,
167 including, but not limited to, the Contributed Funds Agreement, an O&M Agreement, a
168 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
169 exhibits to this Agreement. These exhibits may require modification from time to time, which
170 will be mutually agreed upon without amendment to this Agreement.

171 (c) This Agreement may be modified, amended, or terminated upon mutual
172 agreement of the Parties in writing.

173 (d) Nothing contained in this Agreement shall be construed as in any manner
174 abridging, limiting, or depriving the United States or the Authority or Investors of any means of
175 enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof
176 which it would otherwise have. Any waiver at any time by either Party to this Agreement of its
177 rights with respect to a default, or any other matter arising in connection with this Agreement,
178 shall not be deemed to be a waiver with respect to any subsequent default or matter.

179

COST SHARE

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3. As provided for in WIIN §4007(b)(2), Reclamation may fund up to 50% of the

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Expansion Project costs so long as the benefits from the Expansion Project are commensurate

182

with the federal investment.

183

(a) Reclamation has the authority to share up to 50% of the costs of the

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Expansion Project; however, Reclamation and the Authority have agreed to an initial 70%

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Investor Share of Expanded Reservoir storage and a 30% Federal Share of Expanded Reservoir

186

storage.

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(1) Upon the determination of “Substantial Completion” of

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construction of the Expansion Project, Reclamation and the Authority will meet and confer

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within a reasonable time frame to complete a final accounting of Expansion Project benefits to

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determine and mutually agree upon final storage benefits of the Expansion Project and the

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allocation to Reclamation and the Authority. The final storage benefits attributable to the Parties

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will be documented in an exhibit to this Agreement. Reclamation, in coordination with the

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Authority, will assess the Expansion Project costs and make a determination of which Expansion

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Project costs are reimbursable and which Expansion Project costs are non-reimbursable.

195

(b) Eligible Expansion Project costs are as follows and will be shared in

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accordance with Article 3(a)(1) of this Agreement:

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(1) The Parties have reviewed the Expansion Project costs incurred by

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the Authority and the Investors and Reclamation prior to the effective date of this Agreement.

199

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

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

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

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

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

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

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

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

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

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

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

255 (d) There may be times when Reclamation provides funds to the Authority.
256 These funds will be provided through a financial assistance agreement as provided for in
257 §4007(b) of WIIN. Any funds provided to the Authority for the Expansion Project will be
258 considered part of the cost of this Expansion Project and shared in accordance with Article
259 3(a)(1). Such an agreement, if needed, will be an exhibit to this Agreement.

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

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

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

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

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

281 **MANAGEMENT OF EXPANDED RESERVOIR**

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

287 (a) The Parties will draft and finalize an O&M Agreement for the Expansion
288 Project, including plans to recover the costs for the O&M resulting from the Expansion Project,
289 prior to the first entry of any water subject to this Agreement into any CVP facilities. All future
290 O&M costs associated with the Expansion Project will be commensurate to each Party's final
291 investment, unless otherwise agreed to by the Parties pursuant to subarticle 4(e)(3)(iii)(a) of this
292 Agreement.

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

297 (c) The Parties agree that Reclamation and DWR retain the sole discretion
298 over the operations of the Historic Reservoir and any water pumped into the Historic Reservoir,
299 and that Reclamation, in consultation with Investors through the Water Master/Manager, has
300 discretion over the operations of the Expanded Reservoir, consistent with existing laws,
301 agreements, and obligations and pursuant to the terms of this Agreement.

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

306 (e) Investor Share of Expanded Reservoir: Investors agree to use the Investor
307 Share of the Expanded Reservoir consistent with the terms of this Agreement, and the Parties
308 agree that the Investors possess the ability to partner with non-Investor parties regarding the use,

309 marketing, and/or lease of capacity within the Investor Share of the Expanded Reservoir and/or
310 the storage of water in the Investor Share of the Expanded Reservoir. The Investors shall
311 indemnify the United States, its officers, employees, and agents of damage or claim of any nature
312 whatsoever for which there is any legal responsibility derived from these third-party agreements.
313 Any water in the Investor Share of the Expanded Reservoir will not be displaced by filling of the
314 Historic Reservoir. Reclamation will allow filling of Non-Project Water, Acquired Project
315 Water, or Project Water into the Investor Share of the Expanded Reservoir, as requested by the
316 Investors, in coordination with the Water Master/Manager. Non-Project Water, Acquired Project
317 Water, and Project Water may be stored in the Investor Share of the Expanded Reservoir and
318 moved out of the Investor Share of the Expanded Reservoir at the discretion of the Investors
319 subject to the terms of this Agreement. If an Investor has any water type available to it to move
320 into the Investor Share of the Expanded Reservoir at the same time that Reclamation has Project
321 Water available to it to fill the Expanded Reservoir, the Investor may determine which water
322 type will be (or is) stored on its behalf in the Investor Share of the Expanded Reservoir.

323 (1) Non-Project Water

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

330 (ii) Storage of Non-Project Water in the Investor Share of the
331 Expanded Reservoir will not require a Warren Act Contract. However, any water that is stored in
332 the Investor share of the Expanded Reservoir that may be moved into and accounted for in the
333 Historic Reservoir will require a Warren Act Contract for storage in the Historic Reservoir.

334 (iii) In order to store Non-Project Water in the Investor Share of
335 the Expanded Reservoir, the Investors may direct the movement of Project Water out of the
336 Investor Share of the Expanded Reservoir, provided that there is space in the Historic Reservoir
337 or the Federal Share of the Expanded Reservoir for that Project Water, or, if there is not space
338 available, that the Investors are able to partner with non-Investor parties to take delivery of the
339 Project Water, or Reclamation is able to make that Project Water available as 3(f) Water to other
340 CVP contractors.

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

347 (v) The Parties agree that Non-Project Water stored in the
348 Investor Share of the Expanded Reservoir will not be subject to the San Luis Rescheduling
349 Guidelines, and will not “spill” when the Historic Reservoir fills; further, Reclamation will not
350 use Non-Project Water to meet authorized CVP purposes as defined in subarticle 4(e)(4) of this
351 Agreement until: (1) all available federal supplies have been used by Reclamation, and (2) the

352 Parties first mutually agree in writing to water or monetary compensation, subject to
353 appropriations, or a combination thereof, prior to its use.

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

358 (2) Acquired Project Water

359 (i) In order to store Acquired Project Water in the Investor
360 Share of the Expanded Reservoir, the Investors may direct the movement of Project Water out of
361 the Investor Share of the Expanded Reservoir, provided that there is space in the Historic
362 Reservoir or the Federal Share of the Expanded Reservoir for that Project Water, or if there is not
363 space available, that the Investors are able to partner with non-Investor parties to take delivery of
364 the Project Water, or Reclamation is able to make that Project Water available as 3(f) Water to
365 other CVP contractors..

366 (ii) The Parties agree that Acquired Project Water stored in the
367 Investor Share of the Expanded Reservoir will not be subject to the San Luis Rescheduling
368 Guidelines, and will not "spill" when the Historic Reservoir fills; further, Reclamation will not
369 use Acquired Project Water to meet authorized CVP purposes as defined in subarticle 4(e)(4) of
370 this Agreement until: (1) all available federal supplies south-of-Delta have been used by
371 Reclamation, and (2) the Parties first mutually agree in writing to water or monetary
372 compensation, subject to appropriations, or a combination thereof, prior to its use.

373 (iii) M&I Shortage - Acquired Project Water in the Investor

374 Share of the Expanded Reservoir will be subject to the M&I Water Shortage Policy.

375 (3) Project Water

376 (i) Article 3(f) Water: Consistent with Article 3(f) of an

377 Investor's Water Service/Repayment Contract, the Contracting Officer will make Project Water

378 available to Investors as described below:

379 a. Following the filling of the Federal Share of

380 Historic Reservoir, Reclamation will make Article 3(f) water available to all south-of-Delta CVP

381 contractors capable of taking Article 3(f) water.

382 b. Upon making Article 3(f) water available,

383 Reclamation will fill the Investor Share of the Expanded Reservoir and the Federal Share of the

384 Expanded Reservoir on a proportionate basis in accordance with this Agreement.

385 1. Reclamation will fill the Expanded

386 Reservoir in this fashion until such a time that the Investor Share of the Expanded Reservoir is

387 full or the Investor Share and the Federal Share of the Expanded Reservoir are full.

388 2. Any Article 3(f) water used to fill a portion

389 of the Investor Share of the Expanded Reservoir will be allocated to each Investor.

390 3. Water made available under this article and

391 stored in the Investor Share of the Expanded Reservoir can be scheduled for delivery at a later

392 date at the discretion of the Investors.

393 (ii) Article 3(a) Water: Following the allocation of Water
394 Made Available under Article 3(a) of an Investor’s Water Service/Repayment Contract, an
395 Investor may direct the movement of allocated contract supply to the Investor Share of the
396 Expanded Reservoir, up to the maximum storage capacity of the Investor Share of the Expanded
397 Reservoir, depending on the Investor’s individual circumstances.

398 (iii) The Parties agree that Project Water stored in the Investor
399 Share of the Expanded Reservoir, whether it is Article 3(f) water or Article 3(a) water, will not
400 be subject to the San Luis Rescheduling Guidelines, and will not “spill” when the Historic
401 Reservoir fills; further, Reclamation will not use Project Water to meet authorized CVP purposes
402 as defined in subarticle 4(e)(4) of this Agreement, until Reclamation is unable to deliver an
403 annual substitute water supply of 650,000 AF to San Joaquin River Exchange Contractors and
404 satisfy the statutory obligation for Level 2 refuges in a Shasta Critical Year, after all available
405 federal supplies south-of-Delta have been used by Reclamation to meet CVP purposes. Project
406 Water would be used in this circumstance at a proportionate rate as a percentage of all other
407 supplies available to Reclamation, measured at the point of delivery. Further, Reclamation agrees
408 it will not use an Investor’s M&I Project Water stored in the Investor Share of the Expanded
409 Reservoir to meet these authorized CVP purposes in a Shasta Critical Year or in any Year in
410 which a public health and safety allocation under the M&I Shortage Policy is declared or
411 anticipated to be declared.

412 a. If Reclamation uses Project Water stored in the
413 Investor Share of the Expanded Reservoir to meet CVP purposes, Reclamation shall reimburse or
414 credit the Investors for the federal O&M and Authority O&M costs. Therefore, the quantity of
415 Project Water used will be included in the calculation of that Year’s federal O&M cost

416 obligation for the Expanded Reservoir and the quantity of Project Water used will be included in
417 the calculation for the Authority's share of O&M cost obligation for the Expanded Reservoir for
418 the Year in which Project Water was used by Reclamation. The Parties will also negotiate a
419 service fee relative to storage of the Reclamation-used Project Water in the Investor Share of the
420 Expanded Reservoir.

421 (4) To the extent the subarticles above reference Reclamation's ability
422 to utilize water stored in the Investor Share of the Expanded Reservoir for authorized CVP
423 purposes under certain circumstances, the Parties agree that "authorized CVP purposes," as used
424 herein, are specifically limited to: the unmet minimum deliveries for south-of-Delta San Joaquin
425 River Exchange Contractors and Settlement Contractors in Shasta Critical Years, the unmet
426 minimum CVPIA allocation for south-of-Delta Level 2 refuges, and the unmet public health and
427 safety needs as defined by Article B of the M&I Water Shortage Policy.

428 (f) Losses - All water in the Investor Share of the Expanded Reservoir will be
429 subject to water loss criteria that is applied with proportionality based on actual reservoir losses
430 caused by evaporation and seepage and charged to Reclamation as part of its joint operation with
431 the State of California, as may be amended. In coordination with the Reclamation's South-
432 Central California Area Office, the Water Master/Manager will account for these losses in the
433 accounting for the Investor Share of the Expanded Reservoir.

434 (g) Points of Delivery

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

437 Reclamation agrees that any Investor may amend their CVP Water Service/Repayment Contract
438 to add the Investor Share of the Expanded Reservoir as an additional point of delivery.

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

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

449 (i) Coordination – Prior to the operation of the Expanded Reservoir,
450 Reclamation and the Authority will develop a Coordination Agreement to coordinate and
451 communicate and define roles and responsibilities prior to the storage of water in the Expanded
452 Reservoir, which will be an Exhibit to this Agreement. The Coordination Agreement will,
453 among other things:

454 (1) Define the frequency of coordination between the Parties.

455 (2) Establish a Reclamation approved accounting methodology and
456 system of accounting for water in the investor share of the Expanded Reservoir;

457 (3) Describe the methods through which Reclamation will share
458 forecasting and allocation information with the Water Master/Manager on behalf of the
459 Authority and through which the Parties will acquire access to conveyance capacity; and

460 (4) Provide for a dispute resolution process.

461 (5) Provide for a Water Master/Manager. The Parties agree that a
462 Water Master/Manager will be provided and paid for by the Authority who will coordinate with
463 Reclamation regarding the management of any water moving into, stored in, or moving out of
464 the Investor Share of the Expanded Reservoir, who will account for the water in the Investor
465 Share of Expanded Reservoir, and who will be responsible for the provisional data and
466 coordinating with Reclamation on reconciliation at the end of the contract year and prior to
467 initial allocations of the following Year.

468 **EXISTING CONTRACTS**

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

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

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

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OPINIONS AND DETERMINATIONS

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7. Where the terms of this Agreement provide for actions to be based upon the

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opinion or determination of either party to this Agreement, said terms shall not be construed as

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permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

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determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly

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reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,

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or unreasonable opinion or determination. Each opinion or determination by either Party shall be

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provided in a timely manner. Nothing in this Article is intended to or shall affect or alter the

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standard of judicial review applicable under Federal law to any opinion or determination

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implementing a specific provision of Federal law embodied in statute or regulation.

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NOTICES

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

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CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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OFFICIALS NOT TO BENEFIT

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

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

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

510 **BOOKS, RECORDS, AND REPORTS**

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

521 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

527 **EQUAL EMPLOYMENT OPPORTUNITY**

528 14. The following language is required by Executive Order No. 11246 of September
529 24, 1965, in all government contracts unless and until it is superseded or amended.

530 During the performance of this Agreement, the Authority agrees as follows:

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

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

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

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

561 (e) The Authority will comply with all provisions of Executive Order No.
562 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
563 Labor.

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

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

576 (h) The Authority will include the provisions of paragraphs (a) through (h) in
577 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
578 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
579 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
580 Authority will take such action with respect to any subcontract or purchase order as may be

581 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
582 for noncompliance: Provided, however, that in the event the Authority becomes involved in, or is
583 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
584 Authority may request the United States to enter into such litigation to protect the interests of the
585 United States.

586

COMPLIANCE WITH CIVIL RIGHTS

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

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

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

609 (d) Complaints of discrimination against the Authority shall be investigated
610 by the Contracting Officer's Office of Civil Rights.

611

CERTIFICATION OF NONSEGREGATED FACILITIES

612 16. The Authority hereby certifies that it does not maintain or provide for its
613 employees any segregated facilities at any of its establishments and that it does not permit its
614 employees to perform their services at any location under its control where segregated facilities
615 are maintained. It certifies further that it will not maintain or provide for its employees any
616 segregated facilities at any of its establishments and that it will not permit its employees to
617 perform their services at any location under its control where segregated facilities are
618 maintained. The Authority agrees that a breach of this certification is a violation of the Equal
619 Employment Opportunity clause in this Agreement. As used in this certification, the term

620 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
621 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
622 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
623 facilities provided for employees which are segregated by explicit directive or are in fact
624 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
625 disability, or otherwise. The Authority further agrees that (except where it has obtained identical
626 certifications from proposed subcontractors for specific time periods) it will obtain identical
627 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
628 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
629 will retain such certifications in its files; and that it will forward the following notice to such
630 proposed subcontractors (except where the proposed subcontractors have submitted identical
631 certifications for specific time periods):

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

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

639 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

648 **AGREEMENT DRAFTING CONSIDERATIONS**

649 18. This Agreement has been negotiated and reviewed by the parties hereto, each of
650 whom is sophisticated in the matters to which this Agreement pertains. Articles [redacted] through [redacted] of
651 this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall
652 be considered to have drafted the stated articles.

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

660

661 THE UNITED STATES OF AMERICA

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

667 San Luis & Delta-Mendota Water Authority
668 (SEAL)

669 By: _____
670 Chair, Board of Directors

671 Attest:

672 _____
673 Secretary
674