

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, hereinafter referred to as “DWR,” the operations of which are
33 coordinated between Reclamation and DWR consistent with the 1961 Agreement and all
34 supplements and 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, Reclamation and DWR share responsibility for coordinating
42 operations of the CVP and the State Water Project, hereinafter referred to as “SWP,” and for
43 meeting Sacramento-San Joaquin Delta water quality objectives and other operational
44 requirements pursuant to the 1986 Coordinated Operations Agreement between Reclamation and
45 DWR, as amended; and

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

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

54 [9th] WHEREAS, in accordance with the Reclamation Safety of Dams Act of 1978
55 (Public Law 95-578, 92 Stat. 2471) and 43 U.S.C. § 509 b, to develop additional project benefits,
56 through the B.F. Sisk Dam Safety of Dams Modification Report, in December 2020, the
57 Expansion 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, hereinafter referred to as “WIIN”
60 (Public Law 114-322), on October 20, 2023, Congress authorized construction and associated
61 funding for the B.F. Sisk 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, the Authority certified, and Reclamation signed, a Record of
69 Decision on October 20, 2023, for the Environmental Impact Statement/Report entitled B.F. Sisk
70 Dam Raise and Reservoir Expansion 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 and benefits of the Expansion Project, desire to use the Expansion
79 Project in a 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 into this Agreement, and which may include, but are not limited to, a contributed
83 funds agreement providing for the contribution of funds from Federal cost share partners
84 (§4007(b)(3)(b)) and §4011(e)(2)), an OM&R Agreement, a Repayment Contract providing for
85 repayment of reimbursable obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate, a Spend
86 Plan; and a Coordination Agreement; and which may require further delegation of authority from
87 the Commissioner of Reclamation to negotiate and make a part of this 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, subject to Reclamation approval, from another CVP Water Service/Repayment
97 Contractor, CVP Settlement Contractor, San Joaquin River Exchange Contractor, any other CVP
98 contractor, or from Reclamation.

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(j) of this Agreement.

109 (f) “Expanded Reservoir” shall mean the combined volume of storage in the
110 Federal Share and the Investor Share of the expanded San Luis Reservoir resulting from the
111 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 and provide
115 an additional estimated 130 thousand acre feet (TAF) of storage in San Luis Reservoir.

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

119 (i) “Federal Share of Historic Reservoir” shall mean the storage volume of
120 966 TAF in the Historic Reservoir.

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

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

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

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, Maintenance and Replacement Agreement” or “OM&R
136 Agreement” shall mean the agreement between the United States and the Authority providing for
137 the operation, maintenance, and replacement 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.

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TERM OF AGREEMENT

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2. (a) This Agreement is effective on the date hereinabove written, and will

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remain in full force during the duration of the useful life of the Project or until terminated.

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(b) The Contracting Officer may terminate this Agreement at any time before

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the expiration of its term whenever the Contracting Officer determines that the Authority is in

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substantial violation of the Agreement as provided in this subarticle 2(b) or otherwise in

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violation of Federal law or Reclamation Policy; provided, that prior to the effective date of any

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such termination, the Contracting Officer shall first notify the Authority in writing of, the

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specific purported deficiencies of the Authority in carrying out the terms and conditions of this

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Agreement. It is the intent of the Parties that disputes be resolved pursuant to this subarticle 2(b)

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as expeditiously as is reasonably possible without the necessity of other relief at law or in equity.

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If after the designated representative of the Authority has met with the Contracting Officer or his

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or her designated representative and attempt in good faith and with the use of best efforts to

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resolve any dispute arising from the purported deficiency an agreement is not reached, the

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Contracting Officer may issue a notice of proposed termination, which includes the specific

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deficiencies of the Authority's performance under this Agreement. The Authority shall have at

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least ninety (90) days from receipt of the written notice of proposed termination to correct all

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deficiencies referred to in said written notice. Any termination pursuant to this Article shall be

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subject to the rights and obligations of the Parties as more specifically set forth in this

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Agreement.

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(c) The United States and the Authority jointly shall review this Agreement,

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which review shall be performed at least every five (5) years. A more frequent review will occur

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if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The

183 review shall compare the relative success which each Party has had in meeting its objectives,
184 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a
185 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
186 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be
187 mutually agreed to and signed by the Parties and will be incorporated into this Agreement. The
188 Parties must successfully execute the Spend Plan and the Contributed Funds Agreement, and the
189 Authority must deposit all funds identified as necessary to complete construction in escrow by
190 December 31, 2027, or this Agreement expires on January 1, 2028. Exhibits to this agreement
191 may require modification and may be done without amendment to this Agreement.

192 (d) This Agreement may be modified, amended, or terminated upon mutual
193 agreement of the Parties in writing. All duties and obligations of the Parties under this
194 Agreement will cease upon termination except as to any provisions that expressly survive the
195 termination of the Agreement.

196 **COST SHARE**

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

200 (a) Reclamation has the authority to share up to 50% of the costs of the
201 Expansion Project; however, Reclamation and the Authority have agreed to an initial 70%
202 Investor Share of Expanded Reservoir and a 30% Federal Share of Expanded Reservoir.

203 (1) Upon the determination of “Substantial Completion” of
204 construction of the Expansion Project, Reclamation and the Authority will meet and confer

205 within a reasonable time frame to complete a final accounting of Expansion Project benefits to
206 determine and mutually agree upon final storage benefits of the Expansion Project and the
207 allocation to Reclamation and the Authority. The final storage benefits attributable to the Parties
208 will be documented in an exhibit to this Agreement. Reclamation, in coordination with the
209 Authority, will assess the Expansion Project costs and make a determination of which Expansion
210 Project costs are reimbursable and which Expansion Project costs are non-reimbursable.

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

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

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

222 (3) Environmental Mitigation and Compliance Costs: Either Party may
223 fund environmental mitigation and compliance activities associated with this Agreement. These
224 activities may include, but are not limited to, contracts for technical assistance in environmental
225 mitigation, funding of environmental mitigation commitments, and any actions to ensure

226 consistency with the State California Environmental Quality Act (CEQA) or Federal National
227 Environmental Policy Act (NEPA) laws and regulations.

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

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

238 (6) Administrative Costs: Reclamation will reserve sufficient funding
239 from Federal appropriations to cover its administrative and management costs associated with
240 the Expansion Project. This amount will be considered part of the overall Federal contribution.
241 Reclamation will provide an estimate of the administrative costs for this Expansion Project
242 which will be reviewed with the Authority. The Authority will reserve sufficient funding to pay
243 for its administrative costs for the non-Federal share of the Expansion Project. These costs will
244 be considered contributions to the non-Federal share of the Expansion Project and reported
245 pursuant to subarticle 3(f) of this Agreement. Administrative costs include, unless otherwise
246 defined by contracts: project management, construction management, accounting and
247 administrative management, legal support and review, travel, general meetings related to the

248 Expansion Project, contract/agreement technical meetings and negotiations, and other supportive
249 services and activities necessary for the construction and operation of the Expansion Project
250 prior to the determination of Substantial Completion.

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

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

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

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

269 will be considered part of the cost of this Expansion Project and shared in accordance with
270 subarticle 3(a)(1).

271 (d) There may be times when Reclamation provides funds to the Authority.
272 These funds will be provided through a financial assistance agreement. Any funds provided to
273 the Authority for the Expansion Project will be considered part of the cost of this Expansion
274 Project and shared in accordance with subarticle 3(a)(1).

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

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

281 (g) Repayment: As currently formulated, Reclamation does not anticipate the
282 need for a Repayment Contract for repayment of costs associated with the design and
283 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly
284 check-ins described in subarticle (f) above, review the need for a Repayment Contract. If a
285 Repayment Contract is necessary, Reclamation will seek delegated authority from the
286 Commissioner to negotiate and execute said contract, which will be an exhibit to this Agreement.
287 The Parties will closely monitor the potential for reimbursable costs and the need for a
288 Repayment Contract and conduct any necessary financial analysis, in accordance with PEC 11-
289 01, prior to executing any such contract.

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

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

296 (h) The duties and obligations of the Parties under this Article 3 would
297 expressly survive termination of this Agreement.

298 **MANAGEMENT OF EXPANDED RESERVOIR**

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

304 (a) The Parties will draft and finalize an OM&R Agreement for the Expansion
305 Project prior to the first entry of any water subject to this Agreement into any CVP facilities. All
306 future OM&R costs associated with the Expansion Project will be commensurate to each Party's
307 final investment, unless otherwise agreed to in writing by the Parties pursuant to this Agreement.

308 (b) Nothing in this Agreement shall imply or convey any rights or process to
309 the Authority or their assignees for rights or privileges to water or operations in the Federal
310 Share of Expanded Reservoir or the Historic Reservoir and the Authority agrees that it shall not
311 seek these rights outside of this Agreement.

312 (c) The Parties agree that Reclamation and DWR retain the sole discretion
313 over the operations of the Historic Reservoir.-Operations of the Expanded Reservoir will be
314 consistent with existing laws, agreements, and obligations and pursuant to the terms of this
315 Agreement and in consultation with the Authority through the Water Master/Manager.

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

320 (e) Investor Share of Expanded Reservoir: The Authority agrees to use the
321 Investor Share of Expanded Reservoir consistent with the terms of this Agreement, and the
322 Parties agree that the Authority possesses the ability to partner with non-Investor parties
323 regarding the use, marketing, and/or lease of capacity within the Investor Share of Expanded
324 Reservoir and/or the storage of water in the Investor Share of Expanded Reservoir. The
325 Authority shall indemnify the United States, its officers, employees, and agents of damage or
326 claim of any nature whatsoever for which there is any legal responsibility derived from these
327 third-party agreements. Non-Project Water, Acquired Project Water, and/or Project Water will
328 be stored in the Investor Share of Expanded Reservoir and moved out of the Investor Share of
329 Expanded Reservoir subject to the terms of this Agreement. If an Investor has any water type
330 available to move into the Investor Share of Expanded Reservoir at the same time that
331 Reclamation has Project Water available to it to fill the Expanded Reservoir, and Reclamation
332 deems conveyance capacity is available, the Investor may determine which water type will be (or
333 is) stored on its behalf in the Investor Share of Expanded Reservoir. Water stored in the Investor

334 Share of Expanded Reservoir will not be subject to the San Luis Rescheduling Guidelines and
335 will not be displaced, or “spill,” upon the filling of the Federal Share of Historic Reservoir.

336 (1) Non-Project Water

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

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

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

352 (iv) Reclamation will not use Non-Project Water to meet
353 authorized CVP purposes until: (1) all available CVP supplies have been used or projected to be
354 used by Reclamation, and (2) the Parties first mutually agree in writing to water or monetary
355 compensation, subject to appropriations, or a combination thereof, prior to its use.

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

360 (2) Acquired Project Water

361 (i) Reclamation, at its discretion, will only use Acquired
362 Project Water in the Investor Share of Expanded Reservoir (1) to meet the unmet required
363 deliveries for south-of-Delta San Joaquin River Exchange Contractors and Settlement
364 Contractors, the unmet CVPIA allocation for south-of-Delta Level 2 refuges, and the unmet
365 public health and safety needs as defined by the M&I Water Shortage Policy as may be amended
366 or superseded; (2) concurrently with all other available CVP water supplies; (3) in coordination
367 with the Water Coordinator. No later than the initial Critical Year determination, but as soon as
368 practicable, Reclamation, in coordination with the Water Coordinator, will begin scheduling
369 available water in the Investor’s Share of Expanded Reservoir for the above stated purposes; and
370 (4) with agreed upon compensation for Reclamation’s use of Acquired Project Water per one of
371 the following options:

372 a. Subject to appropriations, Reclamation will
373 compensate the total acquisition cost of the water prior to any losses or the current year market
374 rate (replacement cost) with a demonstration of proof, whichever is greater, for the full quantity
375 of Acquired Project Water taken; or

376 b. Reclamation will compensate in future water at a
377 rate of 2:1 in replacement for the water needed by Reclamation. The quantity of water returned

378 cannot exceed the amount of available storage in the Investor Share of Expanded Reservoir. Any
379 water returned will be considered Acquired Project Water in the Investor Share of the Expanded
380 Reservoir upon its return; or

381 c. Subject to appropriations, Reclamation will
382 compensate for half the total acquisition cost of the water prior to any losses or the current spot
383 market rate (replacement cost) with a demonstration of proof, whichever is greater, for the full
384 quantity of Acquired Project Water taken, and will replace the water needed by Reclamation at a
385 rate of 1:1. Any water returned will be considered Acquired Project Water in the Investor Share
386 of the Expanded Reservoir upon its return.

387 (ii) M&I Shortage – Acquired Project Water in the Investor
388 Share of Expanded Reservoir will be subject to the M&I Water Shortage Policy.

389 (3) Project Water

390 (i) Article 3(a) Water: Following the allocation of Water
391 Made Available under Article 3(a) of an Investor’s Water Service/Repayment Contract, an
392 Investor may direct the movement of allocated contract supply to the Investor Share of Expanded
393 Reservoir, up to the maximum storage capacity of the Investor Share of Expanded Reservoir.

394 (ii) Article 3(f) Water: Each Investor holds a Repayment
395 Contract that contains Article 3(f), which provides a mechanism for Reclamation to make
396 “Article 3(f) water” available. For the purpose of this Agreement, the Contracting Officer will
397 make Article 3(f) water available to Investors in addition to the Investors’ CVP contract
398 allocation in every year that Article 3(f) is available, as described below:

399 a. Following the filling of the Federal Share of
400 Historic Reservoir, Reclamation will make a determination that Article 3(f) water is available to
401 all south-of-Delta CVP Water Service/Repayment Contractors capable of taking Article 3(f)
402 water.

403 b. Upon making Article 3(f) water available,
404 Reclamation will fill the Investor Share of Expanded Reservoir and the Federal Share of
405 Expanded Reservoir on a proportionate basis in accordance with this Agreement.

406 1. Reclamation will fill the Expanded
407 Reservoir until such a time that the Investor Share of Expanded Reservoir is full or the Investor
408 Share and the Federal Share of Expanded Reservoir are full.

409 2. Any Article 3(f) water used to fill a portion
410 of the Investor Share of Expanded Reservoir will be allocated to each Investor that has available
411 capacity in the Expanded Reservoir.

412 3. Water made available under this subarticle
413 4(e)(3)(ii) and stored in the Investor Share of Expanded Reservoir can be scheduled for delivery
414 at a later date at the discretion of the Authority.

415 a. (iii) Reclamation, at its discretion, will only use
416 Project Water in the Investor Share of Expanded Reservoir (1) to meet the unmet required
417 deliveries for south-of-Delta San Joaquin River Exchange Contractors and Settlement
418 Contractors, the unmet CVPIA allocation for south-of-Delta Level 2 refuges, and the unmet
419 public health and safety needs as defined by the M&I Water Shortage Policy as may be amended
420 or superseded; (2) concurrently with all other available CVP water supplies; and (3) in

421 coordination with the Water Coordinator. No later than the initial Critical Year determination,
422 but as soon as practicable, Reclamation, in coordination with the Water Coordinator, will begin
423 scheduling available water in the Investor's Share of Expanded Reservoir for the above stated
424 purposes. If Reclamation uses Project Water stored in the Investor Share of Expanded Reservoir
425 to meet the enumerated CVP purposes above, Reclamation shall reimburse or credit the
426 Authority for the applicable OM&R costs. Therefore, the quantity of Project Water used by
427 Reclamation will be included in the calculation of that Year's Federal OM&R cost obligation
428 allocated by DWR for the Expanded Reservoir and will be deducted from the Authority's share
429 of OM&R cost obligation for the Year in which Project Water was used by Reclamation.

430 (f) Displacement of Project Water – In order to store Non-Project Water or
431 Acquired Project Water in the Investor Share of Expanded Reservoir, through the Water
432 Coordinator and in coordination with Reclamation, may move Project Water out of the Investor
433 Share of Expanded Reservoir in the following way in order of priority:

434 (1) Project Water moves from the Investor Share of Expanded
435 Reservoir to the Historic Reservoir unless the Historic Reservoir is full;

436 (2) If the Historic Reservoir is full, then the Project Water would move
437 to the Federal Share of Expanded Reservoir; and

438 (3) If the Federal Share of Expanded Reservoir is full, then the Project
439 Water can be transferred or exchanged subject to applicable statutes, regulations, guidelines, and
440 policies.

441 (4) If the Project Water cannot be transferred or exchanged, then
442 Reclamation can make the Project Water available to CVP contractors per existing CVP Water

443 Service/Repayment Contracts, and subject to applicable regulations, guidelines, and policies.

444 Reclamation will retain full discretion as to the disposition of the Project Water.

445 (g) Losses – All water in the Investor Share of Expanded Reservoir will be
446 subject to water loss criteria that is applied with proportionality based on reservoir losses caused
447 by evaporation and seepage and charged to Reclamation as part of its joint operations with
448 DWR.

449 (h) Points of Delivery

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

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

455 (i) Operation and Maintenance Costs of the San Luis Reservoir – As a result
456 of the Expanded Reservoir, Reclamation may have an increased share of the cost of the operation
457 and maintenance of the B.F. Sisk Dam and San Luis Reservoir. The Parties agree that costs will
458 be paid consistent with existing laws, agreements, and policy, as may be amended or superseded.
459 Further, the Authority agrees it will specifically pay for OM&R costs associated with the
460 Investor Share of Expanded Reservoir; the details regarding such payment and costs will be
461 defined in an OM&R Agreement, which will be an Exhibit to this Agreement.

462 (j) Coordination – Prior to the operation of the Expanded Reservoir,
463 Reclamation and the Authority will develop a Coordination Agreement to coordinate and

464 communicate and define roles and responsibilities prior to the storage of water in the Expanded
465 Reservoir, which will be an Exhibit to this Agreement. The Coordination Agreement will,
466 among other things:

- 467 (1) Define the frequency of coordination between the Parties.
- 468 (2) Establish a Reclamation approved accounting methodology and
469 system of accounting for water in the Investor Share of Expanded Reservoir;
- 470 (3) Provide for a dispute resolution process.
- 471 (4) Provide for a Water Master/Manager. The Parties agree that a
472 Water Master/Manager will be provided and paid for by the Authority who will coordinate with
473 Reclamation regarding the management of any water moving into, stored in, or moving out of
474 the Investor Share of Expanded Reservoir, who will account for the water in the Investor Share
475 of Expanded Reservoir, and who will be responsible for the provisional data and coordinating
476 with Reclamation on reconciliation at the end of the contract year and prior to initial allocations
477 of the following Year.
- 478 (5) Describe the frequency and methods through which Reclamation
479 will share forecasting and allocation information with the Water Master/Manager on behalf of
480 the Authority and through which the Parties will acquire access to conveyance capacity.

481 **EXISTING CONTRACTS**

482 5. Nothing in this Agreement, in any way, alters, changes, or amends existing Water
483 Service/Repayment Contracts with the United States.

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DISPUTE RESOLUTION

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6. Should any dispute arise concerning any provisions of this Agreement, or the Parties' rights and obligations thereunder, the United States and the Authority shall meet and confer in an attempt to resolve the dispute. Prior to the Authority commencing any legal action, or the Contracting Officer referring any matter to the Department of Justice, the party shall provide to the other party thirty (30) days' written notice of the intent to take such action; *Provided, That* such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30)-day notice period, the parties shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that the Authority or the United States may have.

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WAIVER OF NON-COMPLIANCE WITH ANY PROVISION OF THIS AGREEMENT

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

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(b) Nothing contained in this Agreement shall be construed as in any manner abridging, limiting, or depriving the United States, represented by the Contracting Officer, or the Authority of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which it would otherwise have.

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OPINIONS AND DETERMINATIONS

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

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

NOTICES

9. 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.

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

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

536 **OFFICIALS NOT TO BENEFIT**

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

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

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

544 **BOOKS, RECORDS, AND REPORTS**

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

555 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

561 **EQUAL EMPLOYMENT OPPORTUNITY**

562 16. The following language is required by Executive Order No. 11246 of September
563 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

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

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

595 (e) The Authority will comply with all provisions of Executive Order No.
596 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
597 Labor.

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

603 (g) In the event of the Authority's noncompliance with the nondiscrimination
604 clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may

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

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

620 COMPLIANCE WITH CIVIL RIGHTS

621 16. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
622 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
623 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
624 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
625 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
626 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
627 Interior and/or Bureau of Reclamation.

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

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

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

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CERTIFICATION OF NONSEGREGATED FACILITIES

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

666

667 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
 668 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

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MEDIUM FOR TRANSMITTING PAYMENTS

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

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

683

AGREEMENT DRAFTING CONSIDERATIONS

684 19. This Agreement has been negotiated and reviewed by the parties hereto, each of
685 whom is sophisticated in the matters to which this Agreement pertains. Articles [redacted] through [redacted] of
686 this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall
687 be considered to have drafted the stated articles.

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

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THE UNITED STATES OF AMERICA

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By: _____

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

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San Luis & Delta-Mendota Water Authority

703 (SEAL)

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By: _____

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Chair, Board of Directors

706 Attest:

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Secretary