

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 ADMINISTERED SAN LUIS RESERVOIR**

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- Exhibit A: Contributed Funds Agreement
- Exhibit B: Spend Plan
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- Exhibit E: OM&R Agreement
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1           THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2024, pursuant  
2 to the Reclamation Act of 1902 as amended (32 Stat. 388; 43 U.S.C. Part 391); including the Act  
3 of February 21, 1911 (36 Stat. 925), the Reclamation Project Act of 1939, as amended (53 Stat.  
4 1187; 43 U.S.C. Part 485); the San Luis Act of 1960, as amended (Public Law 86-488, 74 Stat.  
5 156); the Reclamation Safety of Dams Act of 1978 (Public Law 95-578, 92 Stat. 2471); the  
6 Reclamation Reform Act of 1982, as amended (Public Law 97-293, 96 Stat. 1261); and Section  
7 305 of the Reclamation States Emergency Drought Relief Act of 1991, enacted March 5, 1992  
8 (106 Stat. 59), the Central Valley Project Improvement Act of 1992, as amended (Public Law  
9 102-575, 106 Stat. 4706); and the Water Infrastructure Improvement for the Nation Act of 2016  
10 (Public Law 114-322, 130 Stat. 1865); made between the UNITED STATES BUREAU OF  
11 RECLAMATION hereinafter the United States or Reclamation, and represented by the officer

12 executing this Agreement, hereinafter referred to as the Contracting Officer, and the SAN LUIS  
13 & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the Authority,  
14 individually referred to as “Party” and collectively referred to as “Parties”.

#### 15 **EXPLANATORY RECITALS**

16 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
17 Project (“CVP”) for diversion, storage, carriage, and distribution of waters of the Sacramento  
18 River, the American River, the Trinity River, and the San Joaquin River and their tributaries for  
19 irrigation and other beneficial uses to serve CVP purposes; and

20 [2<sup>nd</sup>] WHEREAS, the United States holds title, and plans to continue to hold title to the  
21 B.F. Sisk Dam and San Luis Reservoir and authorized features of the San Luis Unit as provided  
22 for in the San Luis Act of 1960; and

23 [3<sup>rd</sup>] WHEREAS, the San Luis Act of 1960 (Public Law 86 – 488, 74 Stat. 156)  
24 authorized the Secretary of the Interior to construct, operate, and maintain an afterbay, forebay,  
25 conveyance facilities, and dam and Reservoir for the joint use by the State of California and the  
26 United States, and as provided in Section 2 of the Act, the Secretary was authorized to enter into  
27 an agreement with the State of California to provide for the coordinated operation of the San  
28 Luis Unit, which resulted in a 1961 Joint Coordination Agreement and subsequent amendatory  
29 and supplemental agreements of 1972 and 1997; and

30 [4<sup>th</sup>] WHEREAS, the United States was authorized to construct the San Luis Unit of  
31 the CVP, a joint use project, shared with the State of California and administered through the  
32 Department of Water Resources, 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 [5<sup>th</sup>] WHEREAS, consistent with the San Luis Act of 1960, Reclamation and DWR  
36 share responsibility for the costs of operation, maintenance, and replacement of B.F. Sisk Dam  
37 and San Luis Reservoir, consistent with the 1961 Agreement Between the United States of  
38 America and The Department of Water Resources of the State of California for the Operation of  
39 the San Luis Unit and all supplements and amendments, Contract No. 14-06-200-9755 (1961  
40 Agreement); and

41 [6<sup>th</sup>] WHEREAS, 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 [7<sup>th</sup>] WHEREAS, Reclamation, in coordination with DWR, initiated extraordinary  
47 maintenance work for the B.F. Sisk Safety of Dams Modification Project to improve the safety  
48 of the continued operation and maintenance of aforementioned dam; and

49 [8<sup>th</sup>] WHEREAS, consistent with Reclamation’s Directives and Standards at CMP 09-  
50 02 and FAC 06-05, Reclamation is authorized to assess the feasibility of increasing San Luis  
51 Reservoir storage capacity in conjunction with the Safety of Dams 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 [9<sup>th</sup>] 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 [10<sup>th</sup>] 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 [11<sup>th</sup>] 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 [12<sup>th</sup>] WHEREAS, the allocations and management of water provided herein are  
69 undertaken by mutual agreement of the Parties and not compelled by requirements of State water  
70 rights law; and

71 [13<sup>th</sup>] WHEREAS, the Authority certified, and Reclamation signed, a Record of  
72 Decision on October 20, 2023, for the Environmental Impact Statement/Report entitled B.F. Sisk  
73 Dam Raise and Reservoir Expansion Project, selecting the Dam Raise Alternative; and

74 [14<sup>th</sup>] WHEREAS, consistent with WIIN §4007(b)(2), Reclamation and the Authority  
75 agree to enter into this Agreement for up to 50% Federal share of the costs of the Expansion  
76 Project including, but not limited to, planning, design, and construction, and as further defined in  
77 this Agreement; and

78 [15<sup>th</sup>] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United  
79 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project  
80 Activity Agreement, as may be amended or supplemented, representing Investors who will

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

83 [16<sup>th</sup>] WHEREAS, other agreements and/or contracts necessary for commencing design,  
84 construction, and/or operation of the Expanded Reservoir may be necessary and may be  
85 incorporated into this Agreement, and which may include, but are not limited to, a contributed  
86 funds agreement providing for the contribution of funds from Federal cost share partners  
87 (§4007(b)(3)(b)) and §4011(e)(2)), an OM&R Agreement, a Repayment Contract providing for  
88 repayment of reimbursable obligations (§4007(b)(3)(c) and 4011(e)(2)), as appropriate, a Spend  
89 Plan; and a Coordination Agreement; and which may require further delegation of authority from  
90 the Commissioner of Reclamation to negotiate and make a part of this Agreement; and

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

#### 95 **DEFINITIONS**

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

98 (a) “Acquired Water” shall mean (1) any water acquired after an action has  
99 been taken by bona fide agreement between two parties (which shall be provided to the Water  
100 Coordinator and/or Contracting Officer) to make the water available for transfer or exchange  
101 from CVP Water Service/Repayment Contractors, CVP Settlement Contractors, San Joaquin  
102 River Exchange Contractors, any other CVP contractor, or from Reclamation, in addition to any  
103 transfer or exchange backstopped by Reclamation, and (2) any Non-Project Water.

104 (b) “Authority-Managed Share of Expanded Reservoir” shall mean the storage  
105 volume of the Expanded Reservoir commensurate with the Investors’ level of investment in the  
106 Expansion Project.

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

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

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

115 (f) “Coordination Agreement” shall mean the agreement provided for in  
116 subarticle 4(j) of this Agreement.

117 (g) “Expanded Reservoir” shall mean the combined volume of storage in the  
118 Federal Share and the Authority-Managed Share of the expanded San Luis Reservoir resulting  
119 from the Expansion Project.

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



124 (i) “Federal Share of Expanded Reservoir” shall mean the storage volume of  
125 the Expanded Reservoir commensurate with the Federal level of investment in the Expansion  
126 Project.

127 (j) “Federal Share of Historic Reservoir” shall mean the storage volume of  
128 966 TAF in the Historic Reservoir.

129 (k) “Historic Reservoir” shall mean the total storage volume of 2.028 Million  
130 Acre-Feet (“MAF”) in San Luis Reservoir.

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

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

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

140 (o) “Operation, Maintenance and Replacement Agreement” or “OM&R  
141 Agreement” shall mean the agreement between the United States and the Authority providing for  
142 the operation, maintenance, and replacement of the Expansion Project.

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

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

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

151 (s) "San Luis Reservoir" shall mean the Historic Reservoir and the Expanded  
152 Reservoir.

153 (t) "San Luis Rescheduling Guidelines" shall mean the Rescheduling  
154 Guidelines for the Federal Share of Storage in San Luis Reservoir, Central Valley Project,  
155 California Great Basin Region, dated January 31, 2022, as may be amended or superseded,  
156 which apply only to the Historic Reservoir.

157 (u) "Shasta Critical Year/Critical Year" shall be consistent with the  
158 definitions in Contracts No. 11r-1144 and 14-06-200-855A-R-1.

159 (u) "Spend Plan" shall mean the plan provided for in subarticle 3(e) of this  
160 Agreement.

161 (v) "Substantial Completion" shall have the same meaning as defined in FAC  
162 01-05 as amended or supplemented.

163 (w) "Water Coordinator" shall mean the individual provided for in subarticle  
164 4(j)(4) of this Agreement.

165 (x) "Year" shall mean the period from and including March 1 of each Calendar  
166 Year through the last day of February of the following Calendar Year.

167 **TERM OF AGREEMENT**

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

170 (b) The Contracting Officer may terminate this Agreement at any time before  
171 the expiration of its term whenever the Contracting Officer determines that the Authority is in  
172 substantial breach of the Agreement or otherwise in violation of Federal law; provided, that prior  
173 to the effective date of any such termination, the Contracting Officer shall first notify the  
174 Authority in writing of, the specific purported deficiencies of the Authority in carrying out the  
175 terms and conditions of this Agreement. It is the intent of the Parties that disputes be resolved  
176 pursuant to this subarticle 2(b) as expeditiously as is reasonably possible without the necessity of  
177 other relief at law or in equity. If after the designated representative of the Authority has met  
178 with the Contracting Officer or his or her designated representative and attempt in good faith and  
179 with the use of best efforts to resolve any dispute arising from the purported deficiency an  
180 agreement is not reached, the Contracting Officer may issue a notice of proposed termination,  
181 which includes the specific deficiencies of the Authority's performance under this Agreement.  
182 The Authority shall have at least one hundred and twenty (120) days from receipt of the written  
183 notice of proposed termination to correct all deficiencies referred to in said written notice. Any  
184 termination pursuant to this Article shall be subject to the rights and obligations of the Parties as  
185 more specifically set forth in this Agreement. If termination occurs pursuant to this subarticle  
186 2(b), the Parties will promptly meet to perform a full assessment of the Parties' respective  
187 investments to inform a determination of what rights survive termination.

188                           (1)     If termination occurs prior to the determination of Substantial  
189 Completion of construction of the Expansion Project, the Parties will meet and confer to review  
190 responsibility for cessation of construction and the appropriate recognition of the Authority's  
191 contributed funds, as documented in applicable Exhibits to this Agreement and any outstanding  
192 financial obligations.

193                           (2)     If termination occurs following the determination of Substantial  
194 Completion of construction of the Expansion Project, the Parties will meet and confer to review  
195 the final storage benefits attributable to the Parties, documented in Exhibit F to this Agreement.  
196 The Parties intend for the Authority and/or its successor(s) in interest to retain the final storage  
197 benefits, consistent with the management provisions in subarticles 4(e) – (h) of this Agreement,  
198 unless the Parties mutually agree in writing to alternative rights and obligations that reflect the  
199 Authority's investment.

200                           (c)     The United States and the Authority jointly shall review this Agreement,  
201 which review shall be performed at least every five (5) years. A more frequent review will occur  
202 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The  
203 review shall compare the relative success which each Party has had in meeting its objectives,  
204 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a  
205 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be  
206 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be  
207 mutually agreed to and signed by the Parties and will be incorporated into this Agreement. As a  
208 precondition to the granting of any benefits or performance of obligations in this Agreement, the  
209 Parties must successfully execute the Spend Plan and the Contributed Funds Agreement, and the  
210 Authority must deposit all funds identified as necessary in the Spend Plan which shall be

211 executed no later than one hundred and twenty (120) days after the execution of this Agreement.

212 Exhibits to this Agreement may require modification which may be accomplished without

213 amendment to this Agreement.

214 (d) This Agreement may be modified, amended, or terminated upon mutual

215 agreement of the Parties in writing. All duties and obligations of the Parties under this

216 Agreement will cease upon termination except as to any provisions that expressly survive the

217 termination of the Agreement.

218 **COST SHARE**

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

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

221 with the Federal investment.

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

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

224 Authority-Managed Share of Expanded Reservoir and a 30% Federal Share of Expanded

225 Reservoir.

226 (1) Upon the determination of Substantial Completion of construction

227 of the Expansion Project, Reclamation and the Authority will meet and confer within a

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

229 and mutually agree upon final storage benefits of the Expansion Project and the allocation to

230 Reclamation and the Authority. The final storage benefits attributable to the Parties, will be

231 documented in an exhibit to this Agreement. Reclamation, in coordination with the Authority,

232 will assess the Expansion Project costs and make a determination of which Expansion Project  
233 costs are reimbursable and which Expansion Project costs are non-reimbursable.

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

236 (1) The Parties have reviewed the Expansion Project costs incurred by  
237 the Authority and Reclamation prior to the effective date of this Agreement. The Parties  
238 acknowledge and agree that the Authority and Reclamation have incurred costs which, if  
239 allowable, will be credited to each Party's cost share obligation under applicable Exhibits to this  
240 Agreement.

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

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

251 (4) Cultural Resource Management Costs: Either Party may fund  
252 cultural studies, investigations, and mitigation needs consistent with this Agreement.  
253 Reclamation will be responsible for all necessary consultations with state offices, Indian tribes,

254 and interested parties pursuant to Section 106 of the National Historic Preservation Act of 1966,  
255 as amended. Reclamation will be responsible for compliance and coordination with the Native  
256 American Graves Protection and Repatriation Act of 1990.

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

261 (6) Administrative Costs: Reclamation will reserve sufficient funding  
262 from Federal appropriations to cover its administrative and management costs associated with  
263 the Expansion Project. This amount will be considered part of the overall Federal contribution.  
264 Reclamation will provide an estimate of the administrative costs for this Expansion Project  
265 which will be reviewed with the Authority. The Authority will reserve sufficient funding to pay  
266 for its administrative costs for the non-Federal share of the Expansion Project. These costs will  
267 be considered contributions to the non-Federal share of the Expansion Project and reported  
268 pursuant to subarticle 3(f) of this Agreement. Administrative costs include, unless otherwise  
269 defined by contracts: project management, construction management, accounting and  
270 administrative management, legal support and review, travel, general meetings related to the  
271 Expansion Project, contract/agreement technical meetings and negotiations, and other supportive  
272 services and activities necessary for the construction and operation of the Expansion Project  
273 prior to the determination of Substantial Completion.

274 (7) Design Costs: Either party may pay for part or all of various design  
275 costs for the Expansion Project. Reclamation will be responsible for design of the embankment

276 of the San Luis Reservoir, but the Authority may contribute funds that will count towards the  
277 cost share. There may be the need for modifications during construction that may require further  
278 design work. These costs will be shared in accordance with subarticle 3(a)(1).

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

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

288 (c) Reclamation and the Authority have proposed using their collective funds  
289 to fund parts of the Expansion Project. A contributed funds agreement may be necessary to help  
290 facilitate transfer of funds to Reclamation from the Authority. Such an agreement, if needed, will  
291 be an exhibit to this Agreement. Any funds contributed to Reclamation for the Expansion Project  
292 will be considered part of the cost of this Expansion Project and shared in accordance with  
293 subarticle 3(a)(1).

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



298                   (e)     Reclamation and the Authority will develop and execute a Spend Plan  
299 containing mutually agreeable terms for the Authority to commit funding required under the  
300 WIIN Act and to track costs and account for funds expended. The Spend Plan will be an exhibit  
301 to this Agreement.

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

305                   (g)     Repayment: As currently formulated, Reclamation does not anticipate the  
306 need for a Repayment Contract for repayment of costs associated with the design and  
307 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly  
308 check-ins described in subarticle (f) above, review the need for a Repayment Contract. If a  
309 Repayment Contract is necessary, Reclamation will seek delegated authority from the  
310 Commissioner to negotiate and execute said contract, which will be an exhibit to this Agreement.  
311 The Parties will closely monitor the potential for reimbursable costs and the need for a  
312 Repayment Contract and conduct any necessary financial analysis, in accordance with PEC 11-  
313 01, prior to executing any such contract.

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

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

320 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),  
321 3(d), and 3(g) would expressly survive termination of this Agreement.

322 **MANAGEMENT OF EXPANDED RESERVOIR**

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

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

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

336 (c) The Parties agree that Reclamation and DWR retain the sole discretion  
337 over the operations of the Historic Reservoir. Operations of the Expanded Reservoir will be  
338 consistent with existing laws, agreements, and obligations and pursuant to the terms of this  
339 Agreement and in consultation with the Authority through the Water Coordinator.

340 (d) Federal Share of Expanded Reservoir: The management of any water in  
341 the Federal Share of Expanded Reservoir is at the sole discretion of Reclamation and will be

342 managed in such a way to be consistent with State and Federal law and existing and future  
343 agreements, guidelines, and programs for Federal benefits.

344 (e) Authority-Managed Share of Expanded Reservoir: The Parties intend that  
345 the Water Coordinator will manage any water in the Authority-Managed Share of Expanded  
346 Reservoir consistent with the provisions below.

347 (1) The Parties agree that the Investors, through the Authority, possess  
348 the ability to partner with non-Investor parties regarding the use, marketing, and/or lease of  
349 capacity within the Authority-Managed Share of Expanded Reservoir and/or the storage of water  
350 in the Authority-Managed Share of Expanded Reservoir. The Authority shall indemnify the  
351 United States, its officers, employees, and agents of damage or claim of any nature whatsoever  
352 for which there is any legal responsibility derived from these third-party agreements.

353 (2) The Authority agrees to use the Authority-Managed Share of  
354 Expanded Reservoir to store Acquired Water, and/or Project Water consistent with the terms of  
355 this Agreement. If an Investor has any water type available to store in the Authority-Managed  
356 Share of Expanded Reservoir at the same time that Reclamation has Project Water available to it  
357 to fill the Expanded Reservoir, and conveyance capacity is deemed available, the Investor may  
358 determine which water type will be (or is) stored on its behalf in the Authority-Managed Share of  
359 Expanded Reservoir. Water stored in the Authority-Managed Share of Expanded Reservoir will  
360 not be subject to the San Luis Rescheduling Guidelines and will not be displaced, or “spill,”  
361 upon the filling of the Federal Share of Historic Reservoir.

362 (3) Acquired Water

363 (i) With the exception of Non-Project Water that may already  
364 exist in the Historic Reservoir and/or SWP water conveyed through the SWP or under agreement  
365 with Reclamation, Non-Project Water is subject to a contract for the use of excess conveyance  
366 capacity in Federal facilities, pursuant to Federal Reclamation law, in order to convey Non-  
367 Project Water to or from the Historic Reservoir.

368 (ii) Storage of Acquired Water in the Authority-Managed Share  
369 of Expanded Reservoir will not require a contract for non-Project use of excess capacity.  
370 However, any Non-Project Water that is stored in the Authority-Managed Share of Expanded  
371 Reservoir that may be moved into and accounted for in the Historic Reservoir will require such a  
372 contract for storage in the Historic Reservoir.

373 (iii) For the purpose of this Agreement, San Joaquin River  
374 Restoration water recaptured consistent with permits issued by the State Water Resources  
375 Control Board, if acquired through agreement and/or stored under agreement, acknowledged by  
376 Reclamation, will be treated as Acquired Water and may be stored in the Authority-Managed  
377 Share of Expanded Reservoir.

378 (iv) Reclamation will not use Acquired Water for any purpose  
379 unless and until the Parties first mutually agree in writing to water or monetary compensation,  
380 subject to appropriations, or a combination thereof, prior to its use.<sup>2</sup> Reclamation shall not use  
381 Acquired Water until all Project Water stored in the Authority-Managed Share of Expanded  
382 Reservoir has been used.

383

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<sup>2</sup> Monetary compensation will be either the total acquisition cost of the water when it was acquired by the Investor or the current year market rate (replacement cost), whichever is greater.

384 (4) Project Water

385 (i) Article 3(a) Water: Following the CVP contract allocation  
386 of Water Made Available under Article 3(a) of an Investor’s Water Service/Repayment Contract,  
387 the Water Coordinator may inform Reclamation as to the amount of water to be accounted for  
388 under this subarticle, up to the maximum storage capacity of the Authority-Managed Share of  
389 Expanded Reservoir.

390 (ii) Article 3(f) Water: Each Investor holds a Repayment  
391 Contract that provides a mechanism for Reclamation to make water available to each Investor in  
392 addition to the Investor’s CVP contract allocation in a given Year. This mechanism is most often  
393 described in Article 3(f) of the Investors’ Repayment Contracts, and so such water is referred to  
394 as “Article 3(f) water.” For the purpose of this Agreement, the Contracting Officer will make  
395 Article 3(f) water available to each Investor to store in the Authority-Managed Share of  
396 Expanded Reservoir in addition to the Investor’s CVP contract allocation in every Year that  
397 Article 3(f) water is available, as described below:

398 (a) Following the filling of the Federal Share of  
399 Historic Reservoir, Reclamation will make a determination that Article 3(f) water is available to  
400 all south-of-Delta CVP Water Service/Repayment Contractors with available storage or  
401 conveyance capacity to take Article 3(f) water.

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

405 (1) Reclamation will fill the Expanded  
406 Reservoir until such a time that the Authority-Managed Share of Expanded Reservoir is full or  
407 the Authority-Managed Share and the Federal Share of Expanded Reservoir are full.

408 (2) Any Article 3(f) water used to fill a portion  
409 of the Authority-Managed Share of Expanded Reservoir will be managed and accounted for by  
410 the Water Coordinator according to the Investors' proportional investments within the Authority-  
411 Managed Share of the Expanded Reservoir.

412 (3) Water made available under this subarticle  
413 4(e)(5)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled  
414 for delivery at a later date in coordination with the Water Coordinator.

415 (iii) Reclamation, at its discretion and in coordination with the  
416 Water Coordinator, will only use Project Water in the Authority-Managed Share of Expanded  
417 Reservoir to meet the unmet required deliveries for south-of-Delta San Joaquin River Exchange  
418 Contractors and Settlement Contractors, the unmet required CVPIA allocation for south-of-Delta  
419 Level 2 refuges, and the unmet required public health and safety needs as defined by the M&I  
420 Water Shortage Policy as may be amended or superseded after all available CVP water supplies  
421 stored in the Federal Share of Historic Reservoir and Federal Share of Expanded Reservoir,  
422 including the South of Delta Drought Plan, have been used. In addition, Project Water in the  
423 Authority-Managed Share of Expanded Reservoir will only be used concurrently and-in  
424 conjunction with other available CVP water supplies also being used.

425 (iv) (a) Every Year, no later than the time of the initial  
426 Year-type determination, but as soon as practicable, Reclamation, in coordination with the Water

427 Coordinator, will evaluate whether it anticipates a need to use Project Water stored in the  
428 Authority-Managed Share of Expanded Reservoir for the purposes enumerated in subarticle  
429 4(e)(4)(iii) above. The results of this evaluation will be promptly communicated with the  
430 Authority. Reclamation, in coordination with the Water Coordinator, will update the evaluation  
431 throughout the Year, including information regarding any changes in anticipated need, the timing  
432 of such need, and the quantity of such need.

433 (b) The Authority, through the Water Coordinator, will  
434 submit monthly schedules to Reclamation for the delivery of Project Water stored in the  
435 Authority-Managed Share of Expanded Reservoir that shows the volumes of water to be  
436 delivered. If Project Water stored in the Authority-Managed Share of Expanded Reservoir is  
437 scheduled for delivery prior to the date when the combined water supplies stored in the Federal  
438 Share of Historic Reservoir and Federal Share of Expanded Reservoir, including the South of  
439 Delta Drought Plan, reach a combined volume of 20,000 acre-feet, Reclamation shall not deny  
440 such delivery, and shall use all reasonable means to deliver the water to the Investor in  
441 accordance with the initial schedule submitted by the Investor or any written revision(s) thereto  
442 submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to  
443 be implemented. Project Water stored in the Authority-Managed Share of Expanded Reservoir  
444 will not be used by Reclamation until the 20,000 acre-feet of stored water in the Federal Shares  
445 is exhausted. Such scheduling restriction of Project Water shall be removed upon the first of the  
446 following two conditions, as of November 1st or when at least two units are operational at the  
447 Jones Pumping Plant; at that time any remaining Project Water in the Authority-Managed Share  
448 of Expanded Reservoir will be made available for scheduling by the Water Coordinator.

449 (5) If Reclamation uses Acquired Water or Project Water stored in the  
450 Authority-Managed Share of Expanded Reservoir to meet the enumerated CVP purposes above,  
451 Reclamation shall reimburse or credit the Authority for the applicable OM&R costs. Therefore,  
452 the quantity of Project Water or Acquired Water used by Reclamation will be included in the  
453 calculation of that Year's Federal OM&R cost obligation allocated by DWR for the Expanded  
454 Reservoir and will be deducted from the Authority's share of OM&R cost obligation for the Year  
455 in which Acquired Water or Project Water was used by Reclamation. Notwithstanding the  
456 foregoing, if Reclamation uses Project Water stored in the Authority-Managed Share of  
457 Expanded Reservoir, the Parties will meet and confer to determine if any additional water or  
458 monetary compensation or other remedy may be appropriate.

459 (f) Displacement of Project Water – In order to store Acquired Water in the  
460 Authority-Managed Share of Expanded Reservoir, the Water Coordinator, in coordination with  
461 Reclamation, will if needed, move Project Water out of the Authority-Managed Share of  
462 Expanded Reservoir. Project Water can be transferred, exchanged, or delivered subject to  
463 applicable statutes, regulations, guidelines, and policies. If the Project Water cannot be timely  
464 transferred, exchanged, or delivered, it will move in the following way and in the following order  
465 of priority:

466 (1) Project Water moves from the Authority-Managed Share of  
467 Expanded Reservoir to the Historic Reservoir unless the Historic Reservoir is full.

468 (2) If the Historic Reservoir is full, then the Project Water moves to  
469 the Federal Share of Expanded Reservoir; and

470 (3) If the Project Water cannot be moved as described above, then  
471 Reclamation can make the Project Water available to CVP contractors per existing CVP Water



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

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

474 (g) Losses – All water in the Authority-Managed Share of Expanded  
475 Reservoir will be subject to water loss criteria that is applied based on reservoir losses caused by  
476 evaporation and seepage and charged to Reclamation as part of its joint operations with DWR,  
477 with the Authority and Reclamation sharing losses proportionate to the water then-stored in the  
478 Expanded Reservoir.

479 (h) Operation and Maintenance Costs of the San Luis Reservoir – As a result  
480 of the Expanded Reservoir, Reclamation may have an increased share of the cost of the operation  
481 and maintenance of the B.F. Sisk Dam and San Luis Reservoir. The Parties agree that costs will  
482 be paid consistent with existing laws, agreements, and policy, as may be amended or superseded.  
483 Further, the Authority agrees it will specifically pay for OM&R costs associated with the  
484 Authority-Managed Share of Expanded Reservoir; the details regarding such payment and costs  
485 will be defined in an OM&R Agreement, which will be an Exhibit to this Agreement.

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

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

492 (2) Establish a Reclamation approved accounting methodology and  
493 system of accounting for water in the Authority-Managed Share of Expanded Reservoir.

494 (3) Provide for a dispute resolution process.

495 (4) Provide for a Water Coordinator. The Parties agree that a Water  
496 Coordinator will be provided and paid for by the Authority who will coordinate with  
497 Reclamation regarding the management of any water moving into, stored in, or moving out of  
498 the Authority-Managed Share of Expanded Reservoir, who will account for the water in the  
499 Authority-Managed Share of Expanded Reservoir, and who will be responsible for the  
500 provisional data and coordinating with Reclamation on reconciliation at the end of the contract  
501 year and prior to initial allocations of the following Year.

502 (5) Describe the coordination process referenced in subarticle 4(e)(6)  
503 above, including but not limited to the frequency and methods through which Reclamation will  
504 share forecasting and allocation information with the Water Coordinator on behalf of the  
505 Authority.

506 (6) Describe the methods through which the Parties will acquire access  
507 to conveyance capacity.

508 (j) Following a determination of Substantial Completion of construction of  
509 the Expansion Project, the duties and obligations of the Parties under subarticles 4(e) – (h) would  
510 expressly survive termination of this Agreement, unless the Parties mutually agree otherwise  
511 above pursuant to subarticle 2(b).

512 **COORDINATION AND COOPERATION**

513 5. (a) In order to further the goals and objectives of this Agreement,  
514 Reclamation and the Authority shall communicate, coordinate, and cooperate with each other.  
515 The communication, coordination, and cooperation provided for hereunder shall extend to all

516 provisions of this Agreement. Each Party shall retain exclusive decision-making authority for all  
517 actions, opinions, and determinations to be made by the respective Party.

518 (b) Nothing in this Article shall be construed to limit or constrain  
519 Reclamation's ability to communicate, coordinate, and cooperate with the Authority or to make  
520 decisions in a timely fashion as needed to protect health, safety, or the physical integrity of  
521 structures or facilities.

### 522 **EXISTING CONTRACTS**

523 6. Nothing in this Agreement, in any way, alters, changes, or amends existing Water  
524 Service/Repayment Contracts with the United States.

### 525 **DISPUTE RESOLUTION**

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

535 Authority or the United States may have.

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

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

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

547 **OPINIONS AND DETERMINATIONS**

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

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

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

563 (c) Nothing in this Agreement, or performance hereunder, constitutes a  
564 waiver of the Parties' respective positions, opinions, or interpretations of California water rights  
565 law, whatever they may be, in circumstances where there is no mutual agreement, as applicable  
566 herein, for the use of the Expanded Reservoir.

567 **NOTICES**

568 10. Any notice, demand, or request authorized or required by this Agreement shall be  
569 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered  
570 to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage  
571 Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid,  
572 or delivered to the San Luis & Delta-Mendota Water Authority, 842 6<sup>th</sup> Street, Los Banos, CA  
573 93635.

574

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

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

581 **OFFICIALS NOT TO BENEFIT**

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

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

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

589 **BOOKS, RECORDS, AND REPORTS**

590 14. The Authority shall establish and maintain accounts and other books and records  
591 pertaining to administration of the terms and conditions of this Agreement, including the  
592 Authority's financial transactions; water supply data; project operation, maintenance, and  
593 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
594 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
595 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
596 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and  
597 regulations, each party to this Agreement shall have the right during office hours to examine and  
598 make copies of the other party's books and records relating to matters covered by this  
599 Agreement.

600 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

606 **EQUAL EMPLOYMENT OPPORTUNITY**

607 16. The following language is required by Executive Order No. 11246 of September  
608 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

624 (c) The Authority will not discharge or in any other manner discriminate  
625 against any employee or applicant for employment because such employee or applicant has  
626 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
627 employee or applicant. This provision shall not apply to instances in which an employee who has  
628 access to the compensation information of other employees or applicants as a part of such  
629 employee's essential job functions discloses the compensation of such other employees or  
630 applicants to individuals who do not otherwise have access to such information, unless such  
631 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
632 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
633 consistent with the Authority's legal duty to furnish information.

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

640 (e) The Authority will comply with all provisions of Executive Order No.  
641 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
642 Labor.

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

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

655 (h) The Authority will include the provisions of paragraphs (a) through (h) in  
656 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
657 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September  
658 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
659 Authority will take such action with respect to any subcontract or purchase order as may be

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

665

### **COMPLIANCE WITH CIVIL RIGHTS**

666 17. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964  
667 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
668 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
669 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
670 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
671 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
672 Interior and/or Bureau of Reclamation.

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

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

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

690

### **CERTIFICATION OF NONSEGREGATED FACILITIES**

691 18. The Authority hereby certifies that it does not maintain or provide for its  
692 employees any segregated facilities at any of its establishments and that it does not permit its  
693 employees to perform their services at any location under its control where segregated facilities  
694 are maintained. It certifies further that it will not maintain or provide for its employees any  
695 segregated facilities at any of its establishments and that it will not permit its employees to  
696 perform their services at any location under its control where segregated facilities are  
697 maintained. The Authority agrees that a breach of this certification is a violation of the Equal  
698 Employment Opportunity clause in this Agreement. As used in this certification, the term



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

711

712 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
 713 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

719

**MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

728

**AGREEMENT DRAFTING CONSIDERATIONS**

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

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