

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 D: Coordination Agreement
- 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 [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, notwithstanding any potential disagreements that may exist
69 concerning background State water rights laws, by mutual consent, this Agreement governs the
70 allocation and management of stored water as provided herein; and

71 [13th] 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 [14th] 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 [15th] 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 [16th] 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 from CVP Water
99 Service/Repayment Contractors, CVP Settlement Contractors, San Joaquin River Exchange
100 Contractors, any other CVP contractor, or from Reclamation, in addition to any transfer or
101 exchange that requires an in lieu operational exchange by Reclamation, subject to Contracting
102 Officer acknowledgment or approval and consistent with any required environmental review, and
103 (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 United States
110 Department of the Interior or his/her duly authorized representative.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 **TERM OF AGREEMENT**

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

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

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

191 (2) If termination occurs following the determination of Substantial
192 Completion of construction of the Expansion Project, the Parties will meet and confer to
193 determine and mutually agree in writing to whether:

194 (i) Reclamation will, in a timely manner, reimburse the
195 Authority’s contributed funds, as documented in applicable Exhibits to this Agreement,
196 including any outstanding financial obligations, or

197 (ii) Reclamation and the Investors, or a successor-in-interest to
198 the Authority, will negotiate a new agreement for the management of the expanded San Luis
199 Reservoir and cost share of charges associated with the raising of the B.F. Sisk Dam and
200 increased storage capacity of the federally administered San Luis Reservoir. Such new
201 agreement would allow the Investors to retain the final storage benefits documented in Exhibit F
202 to this Agreement and include management provisions consistent with subarticles 4(e)-(h) of this
203 Agreement.

204 (iii) If this Agreement is terminated, and the Parties mutually
205 agree to the conditions described in subarticles 2(b)(2)(i) or 2(b)(2)(ii) above, Reclamation will
206 manage the Authority-Managed Share of Expanded Reservoir per interim agreement(s) based on
207 provisions of subarticles 4(e)-(h) of this Agreement until Reclamation reimburses all verifiable
208 contributed funds or a new agreement for the management of the expanded San Luis Reservoir

209 and cost share of charges associated with the raising of the B.F. Sisk Dam and increased storage
210 capacity of the federally administered San Luis Reservoir is executed. If full reimbursement
211 occurs, Reclamation would assume full benefits of the Project.

212 (c) The United States and the Authority jointly shall review this Agreement,
213 which review shall be performed at least every five (5) years. A more frequent review will occur
214 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The
215 review shall compare the relative success which each Party has had in meeting its objectives,
216 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a
217 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
218 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be
219 mutually agreed to and signed by the Parties and will be incorporated into this Agreement. As a
220 precondition to the granting of any benefits or performance of obligations in this Agreement, the
221 Parties must successfully execute the Spend Plan and the Contributed Funds Agreement, and the
222 Authority must deposit all funds identified as necessary in the Spend Plan which shall be
223 executed no later than one hundred and twenty (120) days after the execution of this Agreement.
224 Exhibits to this Agreement may require modification which may be accomplished without
225 amendment to this Agreement.

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

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COST SHARE

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

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

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with the Federal investment.

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

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

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

237

Reservoir.

238

(1) Upon the determination of Substantial Completion of construction

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

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

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

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

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

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

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

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

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

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

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

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acknowledge and agree that the Authority and Reclamation have incurred costs which, if

251 allowable, will be credited to each Party's cost share obligation under applicable Exhibits to this
252 Agreement.

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

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

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

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

273 (6) Administrative Costs: Reclamation will reserve sufficient funding
274 from Federal appropriations to cover its administrative and management costs associated with
275 the Expansion Project. This amount will be considered part of the overall Federal contribution.
276 Reclamation will provide an estimate of the administrative costs for this Expansion Project
277 which will be reviewed with the Authority. The Authority will reserve sufficient funding to pay
278 for its administrative costs for the non-Federal share of the Expansion Project. These costs will
279 be considered contributions to the non-Federal share of the Expansion Project and reported
280 pursuant to subarticle 3(f) of this Agreement. Administrative costs include, unless otherwise
281 defined by contracts: project management, construction management, accounting and
282 administrative management, legal support and review, travel, general meetings related to the
283 Expansion Project, contract/agreement technical meetings and negotiations, and other supportive
284 services and activities necessary for the construction and operation of the Expansion Project
285 prior to the determination of Substantial Completion.

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

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

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

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

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

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

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

317 (g) Repayment: As currently formulated, Reclamation does not anticipate the
318 need for a Repayment Contract for repayment of costs associated with the design and
319 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly
320 check-ins described in subarticle (f) above, review the need for a Repayment Contract. If a
321 Repayment Contract is necessary, Reclamation will seek delegated authority from the
322 Commissioner to negotiate and execute said contract, which will be an exhibit to this Agreement.
323 The Parties will closely monitor the potential for reimbursable costs and the need for a
324 Repayment Contract and conduct any necessary financial analysis, in accordance with PEC 11-
325 01, prior to executing any such contract.

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

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

332 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),
333 3(d), and 3(g) would expressly survive termination of this Agreement.

334 **MANAGEMENT OF EXPANDED RESERVOIR**

335 4. Responsibility for the costs of operation, maintenance, and replacement of B.F.
336 Sisk Dam and San Luis Reservoir will continue to be governed by agreements between the
337 United States and the State of California; the Authority and the Investors shall neither execute

338 nor be a party to any agreement with the State of California for the operation and maintenance of
339 the B.F. Sisk Dam and the Historic Reservoir or the Expanded Reservoir.

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

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

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

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

356 (e) Authority-Managed Share of Expanded Reservoir: The Water Coordinator
357 will manage and account for any water in the Authority-Managed Share of Expanded Reservoir
358 consistent with the provisions below. Project Water will only be stored in the Authority-

359 Managed Share of Expanded Reservoir at the Authority's direction, as provided herein or as
360 otherwise approved in writing by the Authority.

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

367 (2) The Authority agrees to use the Authority-Managed Share of
368 Expanded Reservoir to store Acquired Water, and/or Project Water consistent with the terms of
369 this Agreement. If an Investor has any water type available to store in the Authority-Managed
370 Share of Expanded Reservoir at the same time that Reclamation has Project Water available to it
371 to fill the Expanded Reservoir, and conveyance capacity is deemed available, the Investor may
372 determine which water type will be (or is) stored on its behalf in the Authority-Managed Share of
373 Expanded Reservoir. Water stored in the Authority-Managed Share of Expanded Reservoir will
374 not be subject to the San Luis Rescheduling Guidelines and will not be displaced, or "spill,"
375 upon the filling of the Federal Share of Historic Reservoir.

376 (3) Acquired Water

377 (i) With the exception of Non-Project Water that may already
378 exist in the Historic Reservoir and/or SWP water conveyed through the SWP or under agreement
379 with Reclamation, Non-Project Water is subject to a contract for the use of excess conveyance

380 capacity in Federal facilities, in order to convey Non-Project Water to or from the Historic
381 Reservoir.

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

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

392 (iv) Reclamation will not use Acquired Water for any purpose
393 unless and until the Parties first mutually agree in writing to water or monetary compensation, or
394 a combination thereof, prior to its use².

395 (v) Consistent with Section B.2.i of the Central Valley Project
396 Municipal and Industrial Water Shortage Policy Guidelines and Procedures (“M&I Water
397 Shortage Policy”) as may be amended or superseded, the Contracting Officer will consider
398 Acquired Water in the Authority-Managed Share of Expanded Reservoir as having been acquired

² Subject to Article 11, monetary compensation will be of either the total acquisition cost of the water when it was acquired by the Contractor or the current year market rate (replacement cost), whichever is greater.

399 by Investors to meet individual public health and safety responsibilities and not subject to nor
400 counted against an Investor's available water.

401 (4) Project Water

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

407 (ii) Article 3(f) Water: Each Investor holds a Repayment
408 Contract that provides a mechanism for Reclamation to make water available to each Investor in
409 addition to the Investor's CVP contract allocation in a given Year. This mechanism is most often
410 described in Article 3(f) of the Investors' Repayment Contracts, and so such water is referred to
411 as "Article 3(f) water." For the purpose of this Agreement, the Contracting Officer will make
412 Article 3(f) water available to each Investor to store in the Authority-Managed Share of
413 Expanded Reservoir in addition to the Investor's CVP contract allocation in every Year that
414 Article 3(f) water is available, as described below:

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

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

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

425 (2) Any Article 3(f) water used to fill a portion
426 of the Authority-Managed Share of Expanded Reservoir will be managed and accounted for by
427 the Water Coordinator within the Authority-Managed Share of Expanded Reservoir.

428 (3) Water made available under this subarticle
429 4(e)(5)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled
430 for delivery at a later date in coordination with the Water Coordinator.

431 (iii) Reclamation, at its discretion and in coordination with the
432 Water Coordinator, will only use Project Water in the Authority-Managed Share of Expanded
433 Reservoir to meet the unmet required deliveries for south-of-Delta San Joaquin River Exchange
434 Contractors and Settlement Contractors, the unmet required CVPIA allocation for south-of-Delta
435 Level 2 refuges, and the unmet required public health and safety needs as defined by the M&I
436 Water Shortage Policy as may be amended or superseded, consistent with the following
437 provisions:

438 (a) Every Year, no later than the time of the initial
439 Year-type determination, but as soon as practicable, the Contracting Officer, in coordination with
440 the Water Coordinator, will evaluate whether it anticipates a potential need to use Project Water

441 stored in the Authority-Managed Share of Expanded Reservoir for the purposes enumerated in
442 subarticle 4(e)(4)(iii) above. The results of this evaluation will be promptly communicated with
443 the Authority. Reclamation, in coordination with the Water Coordinator, will update the
444 evaluation throughout the Year, including information regarding any changes in anticipated
445 need, the timing of such need, and the quantity of such need.

446 (b) In each Year that Reclamation anticipates a
447 potential need to use Project Water stored in the Authority-Managed Share of Expanded
448 Reservoir, the Authority, through the Water Coordinator, will submit monthly schedules to
449 Reclamation for the delivery of Project Water stored in the Authority-Managed Share of
450 Expanded Reservoir that shows the volumes of water to be delivered. Reclamation shall use all
451 reasonable means to deliver the water to the contractor in accordance with the initial schedule
452 submitted by the contractor, or any written revision(s) deemed satisfactory to the Contracting
453 Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested
454 change(s) is/are to be implemented. If, however, on the last day of February, cumulative storage
455 in the Federal Share of Historic Reservoir and Federal Share of Expanded Reservoir is 350,000
456 acre-feet or less, then Reclamation will be deemed to have a calculated need for Project Water
457 stored in the Authority-Managed Share of Expanded Reservoir, and the Contracting Officer will
458 inform the Authority, in coordination with the Water Coordinator, of this calculated need. The
459 Contracting Officer will forecast the rate of exhausting the water stored in the Federal Shares,
460 and will identify a date thirty (30) days before the forecasted exhaustion. Schedules will need to
461 demonstrate delivery of water on or before this identified date, or April 1, whichever is later.
462 After this date, Reclamation may use Project Water stored in the Authority-Managed Share of

463 Expanded Reservoir, together with other available CVP water supplies, for the purposes
464 identified in subarticle 4(e)(4)(iii) above.

465 (1) If, following the identified date above,
466 Reclamation determines that the required deliveries for south-of-Delta San Joaquin River
467 Exchange Contractors and Settlement Contractors, the required CVPIA allocation for south-of-
468 Delta Level 2 refuges, and the required public health and safety needs have been met for the
469 Year, and Project Water remains in the Authority-Managed Share of Expanded Reservoir, then
470 Reclamation will so notify the Authority, and the Authority may resume scheduling deliveries
471 out of the Authority-Managed Share of Reservoir.

472 (d) Reclamation intends to use all available CVP water
473 supplies stored in the Federal Share of Historic Reservoir and Federal Share of Expanded
474 Reservoir to meet the purposes identified in subarticle 4(e)(4)(iii) above prior to using any
475 Project Water stored in the Authority-Managed Share of Expanded Reservoir. Prior to the end of
476 any Year in which Reclamation has used Project Water stored in the Authority-Managed Share
477 of Expanded Reservoir, Reclamation will perform an analysis to determine consistency with this
478 intent, and will true up reservoir accounting if required.

479 (5) If Reclamation uses Acquired Water or Project Water stored in the
480 Authority-Managed Share of Expanded Reservoir to meet the enumerated CVP purposes above,
481 Reclamation shall reimburse or credit the Authority for the applicable OM&R costs. Therefore,
482 the quantity of Project Water or Acquired Water used by Reclamation will be included in the
483 calculation of that Year's Federal OM&R cost obligation allocated by DWR for the Expanded
484 Reservoir and will be deducted from the Authority's share of OM&R cost obligation for the Year

485 in which Acquired Water or Project Water was used by Reclamation. Notwithstanding the
486 foregoing, if Reclamation uses Project Water stored in the Authority-Managed Share of
487 Expanded Reservoir, the Parties may meet and confer to determine if water compensation or
488 other remedy may be appropriate.

489 (6) Displacement of Project Water – In order to store Acquired Water
490 in the Authority-Managed Share of Expanded Reservoir, the Water Coordinator, in coordination
491 with Reclamation, will if needed, move Project Water out of the Authority-Managed Share of
492 Expanded Reservoir. Project Water can be transferred, exchanged, or delivered subject to
493 applicable statutes, regulations, guidelines, and policies. If the Project Water cannot be timely
494 transferred, exchanged, or delivered, it will move in the following way and in the following order
495 of priority:

496 (i) Project Water moves from the Authority-Managed Share of
497 Expanded Reservoir to the Historic Reservoir unless the Historic Reservoir is full.

498 (ii) If the Historic Reservoir is full, then the Project Water
499 moves to the Federal Share of Expanded Reservoir; and

500 (iii) If the Project Water cannot be moved as described above,
501 then Reclamation can make the Project Water available to CVP contractors per existing CVP
502 Water Service/Repayment Contracts, and subject to applicable regulations, guidelines, and
503 policies. Reclamation will retain full discretion as to the disposition of the Project Water.

504 (f) Losses – All water in the Authority-Managed Share of Expanded
505 Reservoir will be subject to water loss criteria that is applied based on reservoir losses caused by
506 evaporation and seepage and charged to Reclamation as part of its joint operations with DWR,

507 with the Authority and Reclamation sharing losses proportionate to the water then-stored in the
508 Expanded Reservoir.

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

516 (h) Coordination Agreement – Prior to the operation of the Expanded
517 Reservoir, Reclamation and the Authority will develop a Coordination Agreement to coordinate
518 and communicate and define roles and responsibilities prior to the storage of water in the
519 Expanded Reservoir, which will be an Exhibit to this Agreement. The Coordination Agreement
520 will, among other things:

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

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

524 (3) Provide for a dispute resolution process.

525 (4) Provide for a Water Coordinator. The Parties agree that a Water
526 Coordinator will be provided and paid for by the Authority who will coordinate with
527 Reclamation regarding the management of any water moving into, stored in, or moving out of

528 the Authority-Managed Share of Expanded Reservoir; who will account for and allocate the
529 water in the Authority-Managed Share of Expanded Reservoir, including losses, in proportion to
530 the investments made; and who will be responsible for the provisional data and coordinating with
531 Reclamation on reconciliation at the end of the contract year and prior to initial allocations of the
532 following Year.

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

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

539 (i) Following a determination of Substantial Completion of construction of
540 the Expansion Project, the duties and obligations of the Parties under subarticles 4(e)-(h) may
541 survive termination of this Agreement if the Parties mutually agree pursuant to subarticle 2(b).

542 **COORDINATION AND COOPERATION**

543 **5. (a)** In order to further the goals and objectives of this Agreement,
544 Reclamation and the Authority shall communicate, coordinate, and cooperate with each other.
545 The communication, coordination, and cooperation provided for hereunder shall extend to all
546 provisions of this Agreement. Each Party shall retain exclusive decision-making authority for all
547 actions, opinions, and determinations to be made by the respective Party.

548 (b) Nothing in this Article shall be construed to limit or constrain
549 Reclamation's ability to communicate, coordinate, and cooperate with the Authority or to make

550 decisions in a timely fashion as needed to protect health, safety, or the physical integrity of
551 structures or facilities.

552 **EXISTING CONTRACTS**

553 6. Nothing in this Agreement, in any way, alters, changes, or amends existing Water
554 Service/Repayment Contracts with the United States, or supersedes, negates, or changes or is
555 intended to change any past course of dealings, past practices or precedent, or prior contract
556 interpretation.

557 **DISPUTE RESOLUTION**

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

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

569 8. (a) The waiver by either Party to this Agreement as to any non-compliance
570 with any provision of this Agreement shall not be construed as a waiver of any other non-
571 compliance with any provision of this Agreement or as authority of the other Party to continue

572 such non-compliance with any provision of this Agreement or to make, do, or perform, or not
573 make, do, or perform, as the case may be, any act or thing which would constitute non-
574 compliance with any provision of this Agreement.

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

579 **OPINIONS AND DETERMINATIONS**

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

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

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

599 **NOTICES**

600 10. Any notice, demand, or request authorized or required by this Agreement shall be
601 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered
602 to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage
603 Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid,
604 or delivered to the San Luis & Delta-Mendota Water Authority, 842 6th Street, Los Banos, CA
605 93635.

606

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

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

613 **OFFICIALS NOT TO BENEFIT**

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

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

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

621 **BOOKS, RECORDS, AND REPORTS**

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

632 **COMPLIANCE WITH FEDERAL RECLAMATION LAWS**

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

638 **EQUAL EMPLOYMENT OPPORTUNITY**

639 16. The following language is required by Executive Order No. 11246 of September
640 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

656 (c) The Authority will not discharge or in any other manner discriminate
657 against any employee or applicant for employment because such employee or applicant has
658 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
659 employee or applicant. This provision shall not apply to instances in which an employee who has
660 access to the compensation information of other employees or applicants as a part of such
661 employee's essential job functions discloses the compensation of such other employees or
662 applicants to individuals who do not otherwise have access to such information, unless such
663 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
664 proceeding, hearing, or action, including an investigation conducted by the employer, or is
665 consistent with the Authority's legal duty to furnish information.

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

672 (e) The Authority will comply with all provisions of Executive Order No.
673 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
674 Labor.

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

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

687 (h) The Authority will include the provisions of paragraphs (a) through (h) in
688 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
689 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
690 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
691 Authority will take such action with respect to any subcontract or purchase order as may be

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

697

COMPLIANCE WITH CIVIL RIGHTS

698 17. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
699 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
700 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
701 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
702 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
703 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
704 Interior and/or Bureau of Reclamation.

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

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

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

722

CERTIFICATION OF NONSEGREGATED FACILITIES

723 18. The Authority hereby certifies that it does not maintain or provide for its
724 employees any segregated facilities at any of its establishments and that it does not permit its
725 employees to perform their services at any location under its control where segregated facilities
726 are maintained. It certifies further that it will not maintain or provide for its employees any
727 segregated facilities at any of its establishments and that it will not permit its employees to
728 perform their services at any location under its control where segregated facilities are
729 maintained. The Authority agrees that a breach of this certification is a violation of the Equal
730 Employment Opportunity clause in this Agreement. As used in this certification, the term

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

743

744 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
 745 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

751

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

760

AGREEMENT DRAFTING CONSIDERATIONS

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

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