

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

53 [9th] WHEREAS, consistent with Reclamation’s Directives and Standards, CMP 09-02
54 [Water and Related Resources Feasibility Studies](#), and FAC 06-05, [Developing Additional Project](#)
55 [Benefits in Conjunction with a Safety of Dams Modification Project](#), Reclamation is authorized
56 to assess the feasibility of increasing San Luis Reservoir storage capacity in conjunction with the

57 Safety of Dams modifications to determine if there are additional project benefits ~~and to ensure~~
58 ~~that it is~~ in the best interest of the United States; and

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

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

69 [12th] WHEREAS, notwithstanding any potential disagreements, ~~that may exist~~
70 ~~concerning background State water rights laws, by mutual consent~~ this Agreement governs the
71 allocation and management of storage water as provided herein; and

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

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

80 [15th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
81 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project
82 Activity Agreement(s), as may be amended or supplemented, representing Investors who will
83 collectively share in the costs and benefits of the Expansion Project, desire to use the Expansion
84 Project in a such a manner as may be mutually agreeable to the Parties hereto; and

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

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

97 **DEFINITIONS**

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

100 (a) “Acquired Water” shall mean (1) any water acquired from CVP Water
101 Service/Repayment Contractors, CVP Settlement Contractors, San Joaquin River Exchange
102 Contractors, any other CVP contractor, or from Reclamation, in addition to any transfer or

103 exchange that requires an in lieu operational exchange by Reclamation, subject to Contracting
104 Officer acknowledgement or approval and consistent with any required environmental review
105 and transfer policies and guidelines, and (2) any Non-Project Water.

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

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

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

115 (e) “Contracting Officer” shall mean the Secretary of the United States
116 Department of the Interior or his/her duly authorized representative.

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

120 (e) “Coordination Agreement” shall mean the agreement provided for in
121 subarticle 4(j) of this Agreement.

122 (f) “Expanded Reservoir” shall mean the combined volume of storage in the
123 Federal Share and the Authority-Managed Share of the expanded San Luis Reservoir resulting
124 from the Expansion Project.

125 (g) “Expansion Project” shall mean the B.F. Sisk Dam Raise and Reservoir
126 Expansion Project, consistent with the Record of Decision, dated October 20, 2023, as may be
127 amended or supplemented, which would raise B.F. Sisk Dam an additional ten feet and provide
128 an additional estimated 130 Thousand Acre Feet (TAF) of storage in San Luis Reservoir.

129 (h) “Federal Share of Expanded Reservoir” shall mean the storage volume of
130 the Expanded Reservoir commensurate with the Federal level of investment in the Expansion
131 Project.

132 (i) “Federal Share of Historic Reservoir” shall mean the storage volume of
133 966 TAF in the Historic Reservoir.

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

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

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

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

145 (n) “Operation, Maintenance and Replacement Agreement” or “OM&R
146 Agreement” shall mean the agreement between the United States and the Authority providing for
147 the operation, maintenance, and replacement of the Expansion Project.

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

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

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

156 (r) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
157 Reservoir.

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

162 (t) “Shasta Critical Year/Critical Year” shall be consistent with the
163 definitions in Contracts No. I1r-1144 and 14-06-200-855A-R-1.

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

166 (v) "Substantial Completion" shall have the same meaning as defined in FAC
167 01-05 as amended or supplemented.

168 (w) "Water Coordinator" shall mean the individual provided for in subarticle
169 4(j)(4) of this Agreement.

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

172 **TERM OF AGREEMENT**

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

175 (b) The Contracting Officer may terminate this Agreement at any time before
176 the expiration of its term whenever the Contracting Officer determines that the Authority is in
177 substantial breach of the Agreement or otherwise in violation of Federal law, provided, that prior
178 to the effective date of any such termination, the Contracting Officer shall first notify the
179 Authority in writing of, the specific purported deficiencies of the Authority in carrying out the
180 terms and conditions of this Agreement. It is the intent of the Parties that disputes be resolved
181 pursuant to this subarticle 2(b) as expeditiously as is reasonably possible without the necessity of
182 other relief at law or in equity. If after the designated representative of the Authority has met
183 with the Contracting Officer or his or her designated representative and attempt in good faith and
184 with the use of best efforts to resolve any dispute arising from the purported deficiency an
185 agreement is not reached, the Contracting Officer may issue a notice of proposed termination,

186 which includes the specific deficiencies of the Authority's performance under this Agreement.
187 The Authority shall have at least one hundred and twenty (120) days from receipt of the written
188 notice of proposed termination to correct all deficiencies referred to in said written notice. Any
189 termination pursuant to this Article shall be subject to the rights and obligations of the Parties as
190 more specifically set forth in this Agreement. If termination occurs pursuant to this subarticle
191 2(b), the Parties will promptly meet to perform a full assessment of the Parties' respective
192 investments to inform a determination of what rights survive termination.

193 (1) If termination occurs prior to the determination of Substantial
194 Completion of construction of the Expansion Project, the Parties will meet and confer to review
195 the appropriate recognition of the Authority's contributed funds, as documented in applicable
196 Exhibits to this Agreement including outstanding financial obligations.

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

200 (i) Reclamation will, in a timely manner, reimburse the
201 Authorities contributed funds as documented in applicable in Exhibits to this Agreement,
202 including ~~any~~ appropriate outstanding financial obligations, or

203 (ii) Reclamation and the Investors, or a successor-in-interest to
204 the Authority, will negotiate a new agreement for the management of the expanded San Luis
205 Reservoir and cost share of charges associated with the raising of the B.F. Sisk Dam and
206 increased storage capacity of the federally administered San Luis Reservoir. Such new
207 agreement would allow the Investors to retain the final storage benefits documented in Exhibit F

208 to this Agreement and include management provisions consistent with subarticles 4(e)-(h) of this
209 Agreement.

210 (iii) If this Agreement is terminated, and the Parties mutually
211 agree to the conditions described in subarticles 2(b)(2)(i) or 2(b)(2)(ii) above, Reclamation will
212 manage the Authority-Managed Share of Expanded Reservoir per interim agreement(s) based on
213 provisions of subarticles 4(e)-(h) of this Agreement. until Reclamation reimburses all verifiable
214 contributed funds or a new agreement for the management of the expanded San Luis Reservoir
215 and cost share of charges associated with the raising of the B.F. Sisk Dam and increased storage
216 capacity of the federally administered San Luis Reservoir is executed. If upon full
217 reimbursement occurs, Reclamation would assume full benefits of the Project.

218 (c) The United States and the Authority jointly shall review this Agreement,
219 which review shall be performed at least every five (5) years. A more frequent review will occur
220 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The
221 review shall compare the relative success which each Party has had in meeting its objectives,
222 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a
223 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
224 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be
225 mutually agreed to and signed by the Parties and will be incorporated into this Agreement. As a
226 precondition to the granting of any benefits or performance of obligations in this Agreement, the
227 Parties must successfully execute the Spend Plan and the Contributed Funds Agreement, and the
228 Authority must deposit all funds identified as necessary in the Spend Plan which shall be
229 executed no later than one hundred and twenty (120) days after the execution of this Agreement.

230 Exhibits to this Agreement may require modification which may be accomplished without
231 amendment to this Agreement.

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

236 **COST SHARE**

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

240 (a) Reclamation has the authority to share up to 50% of the costs of the
241 Expansion Project; however, Reclamation and the Authority have agreed to an initial 70%
242 Authority-Managed Share of Expanded Reservoir and a 30% Federal Share of Expanded
243 Reservoir.

244 (1) Upon the determination of Substantial Completion of construction
245 of the Expansion Project, Reclamation and the Authority will meet and confer within a
246 reasonable time frame to complete a final accounting of Expansion Project benefits to determine
247 and mutually agree upon final storage benefits of the Expansion Project and the allocation to
248 Reclamation and the Authority. The final storage benefits attributable to the Parties, will be
249 documented in an exhibit to this Agreement. Reclamation, in coordination with the Authority,
250 will assess the Expansion Project costs and make a determination of which Expansion Project
251 costs are reimbursable and which Expansion Project costs are non-reimbursable.

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

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

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

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

269 (4) Cultural Resource Management Costs: Either Party may fund
270 cultural studies, investigations, and mitigation needs consistent with this Agreement.
271 Reclamation will be responsible for all necessary consultations with state offices, Indian tribes,
272 and interested parties pursuant to Section 106 of the National Historic Preservation Act of 1966,

273 as amended. Reclamation will be responsible for compliance and coordination with the Native
274 American Graves Protection and Repatriation Act of 1990.

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

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

292 (7) Design Costs: Either party may pay for part or all of various design
293 costs for the Expansion Project. Reclamation will be responsible for design of the embankment
294 of the San Luis Reservoir, but the Authority may contribute funds that will count towards the

295 cost share. There may be the need for modifications during construction that may require further
296 design work. These costs will be shared in accordance with subarticle 3(a)(1).

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

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

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

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

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

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

323 (g) Repayment: As currently formulated, Reclamation does not anticipate the
324 need for a Repayment Contract for repayment of costs associated with the design and
325 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly
326 check-ins described in subarticle (f) above, review the need for a Repayment Contract. If a
327 Repayment Contract is necessary, Reclamation will seek delegated authority from the
328 Commissioner to negotiate and execute said contract, which will be an exhibit to this Agreement.
329 The Parties will closely monitor the potential for reimbursable costs and the need for a
330 Repayment Contract and conduct any necessary financial analysis, in accordance with PEC 11-
331 01, prior to executing any such contract.

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

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

338 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),
339 3(d), and 3(g) would expressly survive termination of this Agreement.

340 **MANAGEMENT OF EXPANDED RESERVOIR**

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

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

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

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

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

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

362 (e) Authority-Managed Share of Expanded Reservoir: The Water Coordinator
363 will manage and account for any water in the Authority-Managed Share of Expanded Reservoir
364 consistent with the provisions below. Project Water will only be stored in the Authority-
365 Managed Share of Expanded Reservoir at the Authority's direction, as provided herein or as
366 otherwise approved in writing by the Authority.

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

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

382 (3) Acquired Water

383 (i) With the exception of Non-Project Water that may already
384 exist in the Historic Reservoir and/or SWP water conveyed through the SWP or under agreement
385 with Reclamation, Non-Project Water is subject to a contract for the use of excess conveyance
386 capacity in Federal facilities, in order to convey Non-Project Water to or from the Historic
387 Reservoir.

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

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

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

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 .

401 (v) Consistent with Section B.2.i of the Central Valley Project
402 Municipal and Industrial Water Shortage Policy Guidelines and Procedures (“M&I Water
403 Shortage Policy”) as may be amended or superseded, the Contracting Officer will consider
404 Acquired Water in the Authority-Managed Share of Expanded Reservoir as having been acquired
405 by Investors to meet individual public health and safety responsibilities and not subject to nor
406 counted against an Investor’s available water.

407 (4) Project Water

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

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

421 (a) Following the filling of the Federal Share of
422 Historic Reservoir, Reclamation will make a determination that Article 3(f) water is available to

423 all south-of-Delta CVP Water Service/Repayment Contractors with available storage or
424 conveyance capacity to take Article 3(f) water and

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

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

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

434 (3) Water made available under this subarticle
435 4(e)(5)(ii) and stored in the Authority Managed Share of Expanded Reservoir can be scheduled
436 for delivery at a later date in coordination with the Water Coordinator.

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

444 (a) Every Year, no later than the time of the initial Year-type
445 determination, but as soon as practicable, the Contracting Officer, in coordination with the Water
446 Coordinator, will evaluate whether it anticipates a potential need to use Project Water stored in
447 the Authority-Managed Share of Expanded Reservoir for the purposes enumerated in subarticle
448 4(e)(4)(iii) above. The results of this evaluation will be promptly communicated with the
449 Authority. Reclamation, in coordination with the Water Coordinator, will update the evaluation
450 throughout the Year, including information regarding any changes in anticipated need, the timing
451 of such need, and the quantity of such need.

452 (b) In each Year that Reclamation anticipates a
453 potential need to use Project Water stored in the Authority-Managed Share of Expanded
454 Reservoir, the Authority, through the Water Coordinator, will submit monthly schedules to
455 Reclamation for the delivery of Project Water stored in the Authority-Managed Share of
456 Expanded Reservoir that shows the volumes of water to be delivered and certified by the Water
457 Manager. Scheduling of all water will be in accordance with the Coordination Agreement.
458 Reclamation shall use all reasonable means to deliver the water to the contractor in accordance
459 with the initial schedule submitted by the contractor, or any written revision(s) deemed
460 satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the
461 date(s) on which the requested change(s) is/are to be implemented. If, however, on the last day of
462 February, cumulative storage in the Federal Share of Historic Reservoir and Federal Share of
463 Expanded Reservoir is 350,000 acre-feet or less, then Reclamation will be deemed to have a
464 calculated need for Project Water stored in the Authority-Managed Share of Expanded
465 Reservoir, and the Contracting Officer will inform the Authority, in coordination with the Water
466 Coordinator, of this calculated need. The Contracting Officer will forecast the rate of exhausting

467 the water stored in the Federal Shares, and will identify a date thirty (30) days before the
468 forecasted exhaustion. Schedules will need to demonstrate delivery of water on or before this
469 identified date, or April 1, whichever is later. After this date, Reclamation may use Project Water
470 stored in the Authority-Managed Share of Expanded Reservoir, together with other available
471 CVP water supplies, for the purposes identified in subarticle 4(e)(4)(iii) above.

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

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

486 (5) If Reclamation uses Acquired Water or Project Water stored in the
487 Authority Managed Share of Expanded Reservoir to meet the enumerated CVP purposes above,
488 Reclamation shall reimburse or credit the Authority for the applicable OM&R costs. Therefore,

489 the quantity of Project Water or Acquired Water used by Reclamation will be included in the
490 calculation of that Year's Federal OM&R cost obligation allocated by DWR for the Expanded
491 Reservoir and will be deducted from the Authority's share of OM&R cost obligation for the Year
492 in which Acquired Water or Project Water was used by Reclamation.

493 (7) If Reclamation anticipates a need for any water stored in the
494 Authority Managed Share of Expanded Reservoir based on 90% exceedance forecasts, on or
495 before February 20 of each Year, Reclamation will inform the Authority, in coordination with
496 the Water Coordinator, of this potential need. On or before March 1, the Authority, through the
497 Water Coordinator, will submit a schedule to Reclamation for the delivery of water stored in the
498 Authority Managed Share of Expanded Reservoir in accordance with the noticing and scheduling
499 provision located in the applicable Investor Water Service/Repayment Contract that shows the
500 volumes of water to be delivered. Schedules will need to demonstrate delivery of water on or
501 before April 1 of each Year. Reclamation shall use all reasonable means to deliver the water to
502 the contractor in accordance with the initial schedule submitted by the contractor, or any written
503 revision(s) deemed satisfactory to the Contracting Officer, thereto submitted within a reasonable
504 time prior to the date(s) on which the requested change(s) is/are to be implemented.

505 (f) Displacement of Project Water – In order to store Acquired Project Water
506 in the Authority Managed Share of Expanded Reservoir, the Water Coordinator, in coordination
507 with Reclamation, will if needed, move Project Water out of the Authority-Managed Share of
508 Expanded Reservoir. Project Water can be transferred, exchanged, or delivered subject to
509 applicable statutes, regulations, guidelines, and policies. If the Project Water cannot be timely
510 transferred, exchanged, or delivered, it will move in the following way and in the following order
511 of priority:

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

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

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

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

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

532 (i) Coordination Agreement – Prior to the operation of the Expanded
533 Reservoir, Reclamation and the Authority will develop a Coordination Agreement to coordinate

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

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

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

540 (3) Provide for a dispute resolution process.

541 (4) Provide for a Water Coordinator. The Parties agree that a Water
542 Coordinator will be provided and paid for by the Authority who will coordinate with
543 Reclamation regarding the management of any water moving into, stored in, or moving out of
544 the Authority-Managed Share of Expanded Reservoir, who will account for ~~and allocate the~~
545 water in the Authority-Managed Share of Expanded Reservoir, including losses, ~~in proportion to~~
546 ~~the investments made~~; and who will be responsible for the provisional data and coordinating with
547 Reclamation on reconciliation at the end of the contract year and prior to initial allocations of the
548 following Year.

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

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

555 (i) Following a determination of Substantial Completion of construction of the
556 Expansion Project, the duties and obligations of the Parties under subarticles 4(e)-(h) may
557 survive termination of this Agreement if the Parties mutually agree pursuant to subarticle 2(b)
558 and Article 7.

559 **COORDINATION AND COOPERATION**

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

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

569 **EXISTING CONTRACTS**

570 6. (a) Nothing in this Agreement, in any way, alters, changes, or amends
571 existing Water Service/Repayment Contracts with the United States, or supersedes, negates, or
572 changes or is intended to change any past course of dealings, past practices or precedent, ~~or prior~~
573 ~~contract interpretation.~~

574 (b) In case of any conflict or ambiguity between this Agreement and any
575 Water Service/Repayment Contract, then the respective Water Service/Repayment Contract takes
576 precedence.

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DISPUTE RESOLUTION

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7. Should any dispute arise concerning any provisions of this Agreement, or the

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Parties' rights and obligations thereunder, the United States and the Authority shall meet and

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confer in an attempt to resolve the dispute. Prior to the Authority commencing any legal action,

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or the Contracting Officer referring any matter to the Department of Justice, the party shall

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provide to the other party thirty (30) days' written notice of the intent to take such action;

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Provided, That such notice shall not be required where a delay in commencing an action would

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prejudice the interests of the party that intends to file suit. During the thirty (30)-day notice

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period, the parties shall meet and confer in an attempt to resolve the dispute. Except as

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specifically provided, nothing herein is intended to waive or abridge any right or remedy that the

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Authority or the United States may have.

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WAIVER OF NON-COMPLIANCE WITH ANY PROVISION OF THIS AGREEMENT

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8. (a) The waiver by either Party to this Agreement as to any non-compliance

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with any provision of this Agreement shall not be construed as a waiver of any other non-

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compliance with any provision of this Agreement or as authority of the other Party to continue

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such non-compliance with any provision of this Agreement or to make, do, or perform, or not

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make, do, or perform, as the case may be, any act or thing which would constitute non-

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compliance with any provision of this Agreement.

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(b) Nothing contained in this Agreement shall be construed as in any manner

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abridging, limiting, or depriving the United States, represented by the Contracting Officer, or the

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Authority of any means of enforcing any remedy, either at law or in equity, for the breach of any

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of the provisions hereof which it would otherwise have.

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OPINIONS AND DETERMINATIONS

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

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

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

619

THIRD-PARTY BENEFICIARIES

620 10. This Agreement does not establish any third-party beneficiaries.

621

NOTICES

622 11. Any notice, demand, or request authorized or required by this Agreement shall be
623 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered
624 to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage
625 Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid,
626 or delivered to the San Luis & Delta-Mendota Water Authority, 842 6th Street, Los Banos, CA
627 93635.
628

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CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

635

OFFICIALS NOT TO BENEFIT

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

639

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

643

BOOKS, RECORDS, AND REPORTS

644 15. The Authority shall establish and maintain accounts and other books and records
645 pertaining to administration of the terms and conditions of this Agreement, including the
646 Authority’s financial transactions; water supply data; project operation, maintenance, and
647 replacement logs; project land and rights-of-way use agreements; the water users’ land-use (crop
648 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
649 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
650 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
651 regulations, each party to this Agreement shall have the right during office hours to examine and
652 make copies of the other party’s books and records relating to matters covered by this
653 Agreement.

654

COMPLIANCE WITH FEDERAL RECLAMATION LAWS

655 16. The parties agree that the delivery of irrigation water or use of Federal facilities
656 pursuant to this Agreement is subject to Federal reclamation law, including but not limited to the

657 Reclamation Reform Act of 1982 (43 U.S.C. 390aa, et seq.), as amended and supplemented, and
658 the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation
659 law.

660 **EQUAL EMPLOYMENT OPPORTUNITY**

661 17. The following language is required by Executive Order No. 11246 of September
662 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

678 (c) The Authority will not discharge or in any other manner discriminate
679 against any employee or applicant for employment because such employee or applicant has
680 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
681 employee or applicant. This provision shall not apply to instances in which an employee who has
682 access to the compensation information of other employees or applicants as a part of such
683 employee's essential job functions discloses the compensation of such other employees or
684 applicants to individuals who do not otherwise have access to such information, unless such
685 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
686 proceeding, hearing, or action, including an investigation conducted by the employer, or is
687 consistent with the Authority's legal duty to furnish information.

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

694 (e) The Authority will comply with all provisions of Executive Order No.
695 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
696 Labor.

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

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

709 (h) The Authority will include the provisions of paragraphs (a) through (h) in
710 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
711 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
712 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
713 Authority will take such action with respect to any subcontract or purchase order as may be
714 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
715 for noncompliance: Provided, however, that in the event the Authority becomes involved in, or is
716 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
717 Authority may request the United States to enter into such litigation to protect the interests of the
718 United States.

719 COMPLIANCE WITH CIVIL RIGHTS

720 18. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
721 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
722 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
723 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
724 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
725 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
726 Interior and/or Bureau of Reclamation.

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

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

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

744 **CERTIFICATION OF NONSEGREGATED FACILITIES**

745 19. The Authority hereby certifies that it does not maintain or provide for its
746 employees any segregated facilities at any of its establishments and that it does not permit its
747 employees to perform their services at any location under its control where segregated facilities
748 are maintained. It certifies further that it will not maintain or provide for its employees any
749 segregated facilities at any of its establishments and that it will not permit its employees to
750 perform their services at any location under its control where segregated facilities are
751 maintained. The Authority agrees that a breach of this certification is a violation of the Equal
752 Employment Opportunity clause in this Agreement. As used in this certification, the term
753 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
754 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
755 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
756 facilities provided for employees which are segregated by explicit directive or are in fact
757 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
758 disability, or otherwise. The Authority further agrees that (except where it has obtained identical
759 certifications from proposed subcontractors for specific time periods) it will obtain identical
760 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
761 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
762 will retain such certifications in its files; and that it will forward the following notice to such
763 proposed subcontractors (except where the proposed subcontractors have submitted identical
764 certifications for specific time periods):

765

766 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
767 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

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MEDIUM FOR TRANSMITTING PAYMENTS

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

778 (b) Upon execution of the Agreement, the Authority shall furnish the
779 Contracting Officer with the Authority’s taxpayer’s identification number (TIN). The purpose for
780 requiring the Authority’s TIN is for collecting and reporting any delinquent amounts arising out
781 of the Authority’s relationship with the United States.

782

AGREEMENT DRAFTING CONSIDERATIONS

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

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