

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

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

15 **EXPLANATORY RECITALS**

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

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

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

30 [4th] WHEREAS, the United States was authorized to construct the San Luis Unit of
31 the CVP, a joint use project, shared with the State of California and administered through the
32 Department of Water Resources, 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, [*Water and*](#)
54 [*Related Resources Feasibility Studies*](#) (CMP 09-02), and [*Developing Additional Project Benefits*](#)
55 [*in Conjunction with a Safety of Dams Modification Project*](#) (FAC 06-05), Reclamation is
56 authorized to assess the feasibility of increasing San Luis Reservoir storage capacity in

57 conjunction with the Safety of Dams modifications to determine if there are additional project
58 benefits which are 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 Improvements 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 §4007(e) of the WIIN Act, which provides
64 “[s]ubject to compliance with State water rights laws, the right to use capacity of a federally
65 owned storage project... shall be allocated in such a manner as may be mutually agreed to by
66 the Secretary of the Interior and each party to the agreement,” the Parties agree that this
67 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 among the Parties
70 regarding background law, this Agreement governs the cost share and ~~allocation and~~
71 management of storage as provided herein; and

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

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

79 [15th] WHEREAS, consistent with WIIN §4007(e), Reclamation representing the United
80 States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion Project
81 Activity Agreement(s), as may be amended or supplemented, representing Participating
82 Agencies who will collectively share in the costs and benefits of the Expansion Project, desire to
83 use the Expansion Project in a such a manner as may be mutually agreeable to the Parties hereto;
84 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
91 Spend Plan; and a Coordination Agreement. any of which may require further delegation of
92 authority from the Commissioner of Reclamation to negotiate and make a part of this
93 Agreement; and

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

98 **DEFINITIONS**

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

101 (a) “Acquired Water” shall mean (1) any water acquired from CVP Water
102 Service/Repayment Contractors, CVP Settlement Contractors, San Joaquin River Exchange
103 Contractors, any other CVP contractor, or from Reclamation, in addition to any transfer or
104 exchange that requires an in lieu operational exchange by Reclamation, subject to Contracting
105 Officer acknowledgement or approval consistent with transfer policies and guidelines and any
106 required environmental review, and (2) any Non-Project Water.

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

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

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

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

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

122 (g) “Coordination Agreement” shall mean the agreement provided for in
123 subarticle 4(j) of this Agreement.

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

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

131 (j) “Federal Share of Expanded Reservoir” shall mean the storage volume of
132 the Expanded Reservoir commensurate with the Federal level of investment in the Expansion
133 Project.

134 (k) “Federal Share of Historic Reservoir” shall mean the storage volume of
135 966 TAF in the Historic Reservoir.

136 (l) “Historic Reservoir” shall mean the total storage volume of 2.028 Million
137 Acre-Feet (MAF) in San Luis Reservoir.

138 (m) “Material Adverse Effect” means a material adverse effect on (1) the
139 business, assets, operations, or condition of the Expansion Project taken as a whole, (2) the
140 ability of the Authority or any Participating Agency to perform any of its material obligations, or
141 (3) the material rights of, or benefits available to, Reclamation under this Agreement.

142

143 (n)

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

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

149 (p) “Participating Agencies” shall mean those entities and/or organizations
150 that are represented by the Authority pursuant to the B.F. Sisk Dam Raise and Reservoir
151 Expansion Project Activity Agreement and all supplements and amendments.

152 (q) “Parties” shall mean Reclamation, on behalf of the United States, and the
153 Authority, on behalf of the Participating Agencies.

154 (r) “Project” – Standard Definition

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

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

161 (t) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded
162 Reservoir.

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

167 (v) “Shasta Critical Year/Critical Year” shall be consistent with the
168 definitions in Contracts No. 11r-1144 and 14-06-200-855A-R-1.

169 (v) “Spend Plan” shall mean the plan provided for in subarticle 3(e) of this
170 Agreement.

171 (w) “Substantial Completion” shall have the same meaning as defined in
172 [Completion of a Construction Activity: Transferring Reclamation Capital Assets Under](#)
173 [Construction \(AUC\) to Operation and Maintenance \(O&M\) Status](#) (FAC 01-05), as amended or
174 supplemented.

175 (x) “Water Coordinator” shall mean the individual provided for in subarticle
176 4(i)(4) of this Agreement.

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

179 **TERM OF AGREEMENT**

180 2. (a) This Agreement is effective on the date hereinabove written and will
181 remain in full force until terminated.

182 (b) If the Contracting Officer determines that the Authority is in material
183 breach of the Agreement or otherwise in violation of federal law related to the implementation of

184 this Agreement ~~that has had, or can reasonably be expected to have, a Material Adverse Effect,~~
185 the Contracting Officer shall first notify the Authority in writing of the specific purported
186 deficiencies of the Authority in carrying out the terms and conditions of this Agreement. It is the
187 intent of the Parties that disputes be resolved pursuant to this subarticle 2(b) as expeditiously as
188 is reasonably possible without the necessity of other relief at law or in equity. If after the
189 designated representative of the Authority has met with the Contracting Officer or their
190 designated representative and attempted in good faith and with the use of best efforts to resolve
191 any dispute arising from the purported deficiency an agreement is not reached, the Contracting
192 Officer may issue a notice of proposed termination, which includes the specific deficiencies of
193 the Authority's performance under this Agreement. The Authority shall have at least one
194 hundred and twenty (120) days from receipt of the written notice of proposed termination to
195 submit a plan that demonstrates a reasonable timeframe to correct all deficiencies referred to in
196 said written notice. Upon the Contracting Officer's approval of the plan to correct all
197 deficiencies, the Parties will in good faith coordinate on implementation of the plan to correct all
198 deficiencies including potential updates to the timeframe in the plan to correct all deficiencies. ~~If~~
199 ~~the Authority is proceeding in good faith to correct such deficiencies but such deficiencies~~
200 ~~cannot reasonably be corrected within one hundred twenty (120) days, then the Authority shall~~
201 ~~have at least one hundred eighty (180) days to correct such deficiencies.~~ Any termination
202 pursuant to this Article shall be subject to the rights and obligations of the Parties as more
203 specifically set forth in this Agreement. Failure to remedy these deficiencies shall result in
204 termination of this Agreement, noticed in writing, consistent with the provisions herein.

205 (1) Termination Prior to a Determination of Substantial Completion of
206 Construction of the Expansion Project.

207 (i) Authority-Initiated. The Authority may terminate this
208 Agreement by sending notice of termination to Reclamation, prior to Reclamation's issuance of
209 solicitation of the construction contract.

210 (ii) Reclamation-Initiated. Reclamation may terminate this
211 Agreement if the Authority is in substantial breach of the Agreement or otherwise in violation of
212 federal law related to the implementation of this Agreement that has had, or can reasonably be
213 expected to have, a Material Adverse Effect, consistent with the procedures described in
214 subarticle 2(b) above.

215 (iii) If termination occurs pursuant to subarticles 2(b)(1)(i) or
216 2(b)(1)(ii) above, the Parties will meet and confer to review the appropriate recognition of the
217 Parties' contributed funds, as documented in applicable Exhibits to this Agreement, including
218 any outstanding financial obligations.

219 (2) Termination Following a Determination of Substantial Completion
220 of Construction of the Expansion Project.

221 (i) Mutual Agreement. The Parties may mutually agree to
222 terminate this Agreement in such event, any recognition or reimbursement of the Parties'
223 contributed funds will be in an amount mutually agreeable to the Parties.

224 (ii) Violation of Federal Law. Reclamation may terminate this
225 Agreement if the Authority is in violation of Federal law related to the implementation of this
226 Agreement that has had, or can reasonably be expected to have, a Material Adverse Effect, and

227 the Authority does not correct the violation¹ consistent with the procedures described in
228 subarticle 2(b) above. If the Authority is in violation of law, and assignment or negotiation of a
229 new agreement occurs pursuant to subarticle 2(c) below, the assignment or negotiation of a new
230 agreement may be determined by the Contracting Officer to have corrected the violation of law.
231 In the event of termination for violation of law by a Participating Agency related to the
232 implementation of this Agreement that has had, or can reasonably be expected to have, a
233 Material Adverse Effect, Reclamation will not reimburse the contributed funds of, or any
234 financial obligations associated with, that Participating Agency.

235 (iii) Material Breach of Agreement. Reclamation may terminate
236 this Agreement if the Authority is in substantial breach of this Agreement that has had, or can
237 reasonably be expected to have, a Material Adverse Effect, and the Authority does not correct
238 the breach consistent with the procedures described in subarticle 2(b) above. If the Authority is
239 in substantial breach of this Agreement, and assignment or negotiation of a new agreement
240 occurs pursuant to subarticle 2(c) below, the assignment or negotiation of a new agreement will
241 be deemed to have corrected the breach. Notwithstanding the foregoing, if termination occurs,
242 Reclamation will, in a timely manner, seek appropriate authority and appropriations to reimburse
243 the Authority's contributed funds, as documented in applicable Exhibits to this Agreement,
244 including any remaining financial obligations, in varied amounts based on the number of years
245 following the determination of Substantial Completion of construction of the Expansion Project:

¹ If the notice of deficiency identifies a Participating Agency as having violated Federal law related to implementation of this Agreement that has had, or can reasonably be expected to have, a Material Adverse Effect, the Authority may elect to remove that Participating Agency from participation in the Authority's Activity Agreement or other binding agreement, and such removal will be deemed to have corrected the violation, and will be acknowledged in writing by the Contracting Officer.

- 246 (a) 0 – 25 years: 100%
- 247 (b) 26 – 30years: 50%
- 248 (c) 31– 50 years: 25%
- 249 (d) After 51 years: 0%

250 (iv) If this Agreement is terminated pursuant to subarticles
251 2(b)(2)(i)-(iii) above, Reclamation will manage the Authority-Managed Share of Expanded
252 Reservoir per interim agreement(s) based on provisions of subarticles 4(e)-(h) of this Agreement
253 until Reclamation provides the agreed-upon reimbursement or a new agreement for the
254 management of the expanded San Luis Reservoir and cost share of charges associated with the
255 raising of the B.F. Sisk Dam and increased storage capacity of the federally administered San
256 Luis Reservoir is executed. If reimbursement occurs pursuant to subarticle 2(b)(2)(iii),
257 Reclamation would assume full benefits of the Project.R

258 (3) Repayment. Pursuant to Reclamation Law, Reclamation intends to
259 recover any costs it incurs resulting from the termination of this Agreement.

260 (c) As an alternative to termination of this Agreement, Reclamation and the
261 Participating Agencies, or a successor-in-interest to the Authority, may pursue assignment of the
262 Authority’s rights and obligations, or mutually agree to negotiate a new agreement for the
263 management of the expanded San Luis Reservoir and cost share of charges associated with the
264 raising of the B.F. Sisk Dam and increased storage capacity of the federally administered San
265 Luis Reservoir. The Parties intend that such new agreement(s) would recognize the final storage
266 benefits documented in Exhibits to this Agreement.

267 (d) The United States and the Authority jointly shall review this Agreement,
268 which review shall be performed at least every five (5) years. A more frequent review will occur
269 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The
270 review shall compare the relative success which each Party has had in meeting its objectives,
271 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a
272 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
273 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be
274 mutually agreed to and signed by the Parties and will be incorporated into this Agreement. As a
275 precondition to the granting of any benefits or performance of obligations in this Agreement, the
276 Parties must successfully execute the Spend Plan and the Contributed Funds Agreement no later
277 than one hundred and twenty (120) days after the execution of this Agreement, and the Authority
278 must deposit all funds identified as necessary in the Spend Plan. Exhibits to this Agreement may
279 require modification which may be accomplished without amendment to this Agreement.

280 (e) This Agreement may be modified, amended, or terminated upon mutual
281 agreement of the Parties in writing. All duties and obligations of the Parties under this
282 Agreement will cease upon termination except as to any provisions that expressly survive the
283 termination of the Agreement.

284 **COST SHARE**

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

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

292 (1) Upon the determination of Substantial Completion of construction
293 of the Expansion Project, Reclamation and the Authority will meet and confer within a
294 reasonable time frame to complete a final accounting of Expansion Project benefits to determine
295 and mutually agree upon final storage benefits of the Expansion Project and the allocation to
296 Reclamation and the Authority. The final storage benefits attributable to the Parties will be
297 documented in an exhibit to this Agreement. Reclamation, in coordination with the Authority,
298 will assess the Expansion Project costs and make a determination as to which Expansion Project
299 costs are reimbursable and which Expansion Project costs are non-reimbursable.

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

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

307 (2) Planning Costs: In an effort to reach a finding that the Expansion
308 Project is feasible, certain planning level investigations were necessary and may continue to be
309 necessary prior to commencement of construction. Such planning investigations will be

310 consistent with Reclamation's Directives and Standards, Water and Related Resources
311 Feasibility Studies (CMP 09-02).

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

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

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

328 (6) Administrative Costs: Reclamation will reserve sufficient funding
329 from Federal appropriations to cover its administrative and management costs associated with
330 the Expansion Project. This amount will be considered part of the overall Federal contribution.
331 Reclamation will provide an estimate of the administrative costs for the Expansion Project which

332 will be reviewed with the Authority. The Authority will reserve sufficient funding to pay for its
333 administrative costs for the non-Federal share of the Expansion Project. These costs will be
334 considered contributions to the non-Federal share of the Expansion Project and reported pursuant
335 to subarticle 3(f) of this Agreement. Administrative costs include, unless otherwise defined by
336 contracts: project management, construction management, accounting and administrative
337 management, legal support and review, travel, general meetings related to the Expansion Project,
338 contract/agreement technical meetings and negotiations, and other supportive services and
339 activities necessary for the construction and operation of the Expansion Project prior to the
340 determination of Substantial Completion.

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

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

350 (9) Other Design and Construction Costs: Either Party may pay for
351 part, or all of the remaining non-embankment design and construction costs of associated
352 facilities affected or involved with the Expansion Project including, but not limited to, recreation

353 facilities, power improvements to existing facilities, improvements to pumps, transportation, and
354 other various components of the Expansion Project.

355 (c) Reclamation and the Authority have proposed using their collective funds
356 to fund parts of the Expansion Project. A Contributed Funds Agreement may be necessary to
357 help facilitate the transfer of funds to Reclamation from the Authority. Such an agreement, if
358 needed, will be an exhibit to this Agreement. Any funds contributed to Reclamation for the
359 Expansion Project will be considered part of the cost of this Expansion Project and shared in
360 accordance with subarticle 3(a)(1) of this Agreement.

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

365 (e) Reclamation and the Authority will develop and execute a Spend Plan
366 containing mutually agreeable terms for the Authority to commit funding required under
367 §4007(b)(3)(B) and §4011(e)(2) of the WIIN Act and to track costs and account for funds
368 expended. The Spend Plan will be an exhibit to this Agreement.

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

372 (g) Repayment: As currently formulated, Reclamation does not anticipate the
373 need for a Repayment Contract for repayment of costs associated with the design and
374 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly

375 check-ins described in subarticle 3(f) of this agreement, review the need for a Repayment
376 Contract. If a Repayment Contract is necessary, Reclamation will seek delegated authority from
377 the Commissioner to negotiate and execute said contract, which will be an exhibit to this
378 Agreement. The Parties will closely monitor the potential for reimbursable costs and the need for
379 a Repayment Contract and conduct any necessary financial analysis, in accordance with
380 [*Irrigation Ability-to-Pay Analyses*](#) (PEC 11-01), prior to executing any such contract.

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

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

387 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),
388 3(d), and 3(g) of this Agreement, would expressly survive termination of this Agreement.

389 **MANAGEMENT OF EXPANDED RESERVOIR**

390 4. Responsibility for the costs of operation, maintenance, and replacement of B.F.
391 Sisk Dam and San Luis Reservoir will continue to be governed by agreements between the
392 United States and the State of California; the Authority and the Participating Agencies shall
393 neither execute nor be a Party to any agreement with the State of California for the operation and
394 maintenance of the B.F. Sisk Dam and the Historic Reservoir or the Expanded Reservoir.

395 (a) The Parties will draft and finalize an OM&R Agreement for the Expansion
396 Project prior to the first entry of any water subject to this Agreement into any CVP facilities. All

397 future OM&R costs associated with the Expansion Project will be commensurate to each Party's
398 final investment, unless otherwise agreed to in writing by the Parties pursuant to this Agreement.

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

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

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

411 (e) Authority-Managed Share of Expanded Reservoir: The Water Coordinator
412 will manage and account for any water in the Authority-Managed Share of Expanded Reservoir
413 consistent with the provisions below. All water stored in the Authority-Managed Share of
414 Expanded Reservoir will be for the exclusive benefit of the Authority pursuant to this
415 Agreement. ~~on behalf of Participating Agencies, except pursuant to subarticle 4(e)(4)(iii) below.~~

416 (1) The Parties agree that the Participating Agencies, through the
417 Authority, possess the ability to partner with non-Participating Agency parties regarding the use,
418 marketing, and/or lease of capacity within the Authority-Managed Share of Expanded Reservoir

419 and/or the storage of water in the Authority-Managed Share of Expanded Reservoir. The
420 Authority shall indemnify the United States, its officers, employees, and agents of damage or
421 claim of any nature whatsoever for which there is any legal responsibility derived from these
422 third-party agreements.

423 (2) The Authority agrees to use the Authority-Managed Share of
424 Expanded Reservoir to store Acquired Water, and/or Project Water consistent with the terms of
425 this Agreement. If an Participating Agency has any water type available to store in the
426 Authority-Managed Share of Expanded Reservoir at the same time that Reclamation has Project
427 Water available to it to fill the Expanded Reservoir, and conveyance capacity is deemed
428 available, the Participating Agency may determine which water type will be (or is) stored on its
429 behalf in the Authority-Managed Share of Expanded Reservoir. Water stored in the Authority-
430 Managed Share of Expanded Reservoir will not be subject to the San Luis Rescheduling
431 Guidelines and will not be displaced, or “spill,” upon the filling of the Federal Share of Historic
432 Reservoir.

433 (3) Acquired Water

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

439 (ii) Storage of Acquired Water in the Authority-Managed Share
440 of Expanded Reservoir will not require a contract for non-Project use of excess capacity.

441 However, any Non-Project Water that is stored in the Authority-Managed Share of Expanded
442 Reservoir that may be moved into and accounted for in the Historic Reservoir will require such a
443 contract for storage in the Historic Reservoir.

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

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

452 (v) Consistent with Section B.2.i M&I Water Shortage Policy
453 as may be amended or superseded, the Contracting Officer will consider Acquired Water in the
454 Authority-Managed Share of Expanded Reservoir as having been acquired by Participating
455 Agencies to meet individual public health and safety responsibilities and not subject to nor
456 counted against an Participating Agencies available water.

457 (4) Project Water

458 (i) Article 3(a) Water: Following the CVP contract allocation
459 of Water Made Available under Article 3(a) of an Participating Agency Water
460 Service/Repayment Contract, the Water Coordinator may inform Reclamation as to the amount

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 .

461 of water to be accounted for under this subarticle, up to the maximum storage capacity of the
462 Authority-Managed Share of Expanded Reservoir.

463 (ii) Article 3(f) Water: Each Participating Agency holds a
464 Repayment Contract that provides a mechanism for Reclamation to make water available to each
465 Participating Agency in addition to the Participating Agency CVP contract allocation in a given
466 Year. This mechanism is most often described in Article 3(f) of the Participating Agency
467 Repayment Contracts, and so such water is referred to as “Article 3(f) water.” For the purpose of
468 this Agreement, the Contracting Officer will make Article 3(f) water available to each
469 Participating Agency to store in the Authority-Managed Share of Expanded Reservoir in addition
470 to the Participating Agency CVP contract allocation in every Year that Article 3(f) water is
471 available, as described below:

472 (a) Following the filling of the Federal Share of
473 Historic Reservoir, Reclamation will make a determination that Article 3(f) water is available to
474 all south-of-Delta CVP Water Service/Repayment Contractors with available storage or
475 conveyance capacity to take Article 3(f) water pursuant to their respective Water
476 Service/Repayment contracts.

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

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

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

486 (3) Water made available under this subarticle
487 4(e)(5)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled
488 for delivery at a later date in coordination with the Water Coordinator.

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

496 (a) Upon the initial CVP contract allocation on or about
497 February 20, if Reclamation announces a 0% contract allocation for south-of-Delta agricultural
498 contractors and determines a forecasted need (based on the 90% exceedance forecast) for Project
499 Water stored in the Authority-Managed Share of Expanded Reservoir for the purposes
500 enumerated in subarticle 4(e)(4)(iii) above, Reclamation will promptly notify the Authority of
501 this forecasted need. Reclamation, in coordination with the Water Coordinator, will update its
502 forecast and re-evaluate the forecasted need for use of Project Water stored in the Authority-
503 Managed Share of Expanded Reservoir throughout the Year or upon request by the Water

504 Coordinator supported by evidence justifying the request, including information regarding any
505 changes in forecasted need, the timing of such need, and the quantity of such need.

506 (b) In any Year when such a potential need has been
507 identified, the Authority's March 1 monthly delivery schedule (see subarticle 4(i)(6) below) shall
508 demonstrate delivery of Project Water out of the Authority-Managed Share of Expanded
509 Reservoir on or before April 1. After April 1, Reclamation may use Project Water stored in the
510 Authority-Managed Share of Expanded Reservoir, together with other available CVP water
511 supplies, for the purposes identified in subarticle 4(e)(4)(iii) above.

512 (c) On or around May 20, aligned with an updated May
513 forecast, Reclamation will notify the Authority of any Project Water in the Authority-Managed
514 Share of Expanded Reservoir that was not delivered for the purposes identified in subarticle
515 4(e)(4)(iii) above. Upon such notification, the Authority may resume deliveries out of the
516 Authority-Managed Share of Expanded Reservoir per updated schedules. Alternatively, if at any
517 time the contract allocation for south-of-Delta agricultural contractors increases above 0%, the
518 Authority may resume deliveries out of the Authority-Managed Share of Expanded Reservoir per
519 updated schedules.

520 (d) Reclamation intends to use all available CVP water
521 supplies stored in the Federal Share of Historic Reservoir and Federal Share of Expanded
522 Reservoir, and any other supply available to Reclamation intended to mitigate conditions of
523 drought consistent with the terms of the corresponding programs, to meet the purposes identified
524 in subarticle 4(e)(4)(iii) above prior to using any Project Water stored in the Authority-Managed
525 Share of Expanded Reservoir. Prior to the end of any Year in which Reclamation has used

526 Project Water stored in the Authority-Managed Share of Expanded Reservoir, Reclamation will,
527 in coordination with the Water Coordinator, perform an analysis to determine consistency with
528 this intent, and will true up reservoir accounting if needed.

529 (5) If Reclamation uses Acquired Water or Project Water stored in the
530 Authority-Managed Share of Expanded Reservoir to meet the enumerated CVP purposes above,
531 Reclamation shall reimburse or credit the Authority for the applicable OM&R costs. Therefore,
532 the quantity of Project Water or Acquired Water used by Reclamation will be included in the
533 calculation of that Year's Federal OM&R cost obligation allocated by DWR for the Expanded
534 Reservoir and will be deducted from the Authority's share of OM&R cost obligation for the Year
535 in which Acquired Water or Project Water was used by Reclamation.

536 (f) Displacement of Project Water: – In order to store Acquired Project Water
537 in the Authority Managed Share of Expanded Reservoir, the Water Coordinator, in coordination
538 with Reclamation, will if needed, move Project Water out of the Authority-Managed Share of
539 Expanded Reservoir. Project Water can be transferred, exchanged, or delivered subject to
540 applicable statutes, regulations, guidelines, and policies. If the Project Water cannot be timely
541 transferred, exchanged, or delivered, it will move in the following way and in the following order
542 of priority:

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

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

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

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

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

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

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

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

571 (3) Provide for a dispute resolution process.

572 (4) Provide for a Water Coordinator. The Parties agree that a Water
573 Coordinator will be provided and paid for by the Authority who will coordinate with
574 Reclamation regarding the management of any water moving into, stored in, or moving out of
575 the Authority-Managed Share of Expanded Reservoir, who will account for the water in the
576 Authority-Managed Share of Expanded Reservoir, including losses, ~~consistent with the B.F. Sisk
577 Dam Raise and Reservoir Expansion Project Activity Agreement as may be amended or
578 supplemented, or any other agreement with the Participating Agencies;~~ and who will be
579 responsible for the provisional data and coordinating with Reclamation on reconciliation at the
580 end of the contract year and prior to initial allocations of the following Year.

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

585 (6) Describe the monthly schedules that the Authority, through the
586 Water Coordinator, will submit to Reclamation to show the volumes of water to be delivered out
587 of the Authority-Managed Share of Expanded Reservoir, and Reclamation's duty to use all
588 reasonable means to deliver the water in accordance with the initial schedule submitted by the
589 contractor, or any written revision(s) deemed satisfactory to the Contracting Officer, thereto

590 submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to
591 be implemented.

592 (7) Describe the methods through which the Parties will acquire access to
593 conveyance capacity.

594 (i) Following a determination of Substantial Completion of construction of the
595 Expansion Project, the duties and obligations of the Parties under subarticles 4(e)-(h) may
596 survive termination of this Agreement if the Parties mutually agree.

597 **COORDINATION AND COOPERATION**

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

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

607 **EXISTING CONTRACTS**

608 6. (a) Nothing in this Agreement, in any way, alters, changes, or amends
609 existing Water Service/Repayment Contracts with the United States, or supersedes, negates, or
610 changes or is intended to change any past course of dealings, past practices or precedent.

611 (b) In case of any conflict between this Agreement and the Water
612 Service/Repayment Contract of any Participating Agency or any non-Participating Agency
613 partner then the respective Water Service/Repayment Contract takes precedence.

614 **DISPUTE RESOLUTION**

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

625 (b) Reclamation shall have no responsibility to participate in or resolve
626 disputes between the Authority and the Participating Agencies regarding this Agreement.

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

628 8. (a) The waiver by either Party to this Agreement as to any non-compliance
629 with any provision of this Agreement shall not be construed as a waiver of any other non-
630 compliance with any provision of this Agreement or as authority of the other Party to continue
631 such non-compliance with any provision of this Agreement or to make, do, or perform, or not

632 make, do, or perform, as the case may be, any act or thing which would constitute non-
633 compliance with any provision of this Agreement.

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

638 **OPINIONS AND DETERMINATIONS**

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

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

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

658 Nothing in this Agreement is intended to create any right in any entity not a signatory to
659 this Agreement nor shall any entity be considered a third party beneficiary to this Agreement.
660 This Agreement is not intended to bind or affect any non-signatory party, and the failure of any
661 non-signatory party to object to any provision of this Agreement cannot be viewed as waiving,
662 affecting, or prejudicing any non-signatory party's rights, factual arguments, legal arguments or
663 legal positions.

664 **NOTICES**

665 11. Any notice, demand, or request authorized or required by this Agreement shall be
666 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered
667 to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage
668 Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid,
669 or delivered to the San Luis & Delta-Mendota Water Authority, 842 6th Street, Los Banos, CA
670 93635.
671

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

673 12. The expenditure or advance of any money or the performance of any obligation of
674 the United States under this Agreement shall be contingent upon appropriation or allotment of
675 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any

676 obligations under this Agreement. No liability shall accrue to the United States in case funds are
677 not appropriated or allotted.

678 **OFFICIALS NOT TO BENEFIT**

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

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

683 14. (a) The provisions of this Agreement shall apply to and bind the successors
684 and assigns of the Parties hereto, but no assignment or transfer of this Agreement or any right or
685 interest therein by either Party shall be valid until approved in writing by the other Party.

686 (b) Reclamation shall not unreasonably withhold its consent to an assignment
687 of the Authority’s rights and obligations under this Agreement to a third party.

688 **BOOKS, RECORDS, AND REPORTS**

689 15. The Authority shall establish and maintain accounts and other books and records
690 pertaining to administration of the terms and conditions of this Agreement, including the
691 Authority’s financial transactions; water supply data; project operation, maintenance, and
692 replacement logs; project land and rights-of-way use agreements; the water users’ land-use (crop
693 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
694 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
695 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and
696 regulations, each Party to this Agreement shall have the right during office hours to examine and
697 make copies of the other Party’s books and records relating to matters covered by this
698 Agreement.

699 **COMPLIANCE WITH LAWS**

700 16. (a) The Parties agree that the delivery of irrigation water or use of Federal
701 facilities pursuant to this Agreement is subject to Federal reclamation law, including but not
702 limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa, et seq.), as amended and
703 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
704 Federal reclamation law.

705 (b) The Parties agree that the delivery of water or the use of Federal
706 facilities pursuant to this Agreement is subject to Federal reclamation law, as
707 amended and supplemented, and the rules and regulations promulgated by the
708 Secretary of the Interior under Federal reclamation law.

709 (c) The Contracting Officer shall have the right to make
710 determinations necessary to administer this Agreement that are consistent with its
711 expressed and implied provisions, the laws of the United States and the State of
712 California, and the rules and regulations promulgated by the Secretary of the Interior.
713 Such determinations shall be made in consultation with the Contractor.

714 (d) In protecting the interests of the United States, Reclamation's contracts
715 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.
716 These laws may include environmental, civil rights, and cultural resources protection laws,
717 among others, as well as laws that may be later enacted. Reclamation's water-related contracts
718 will be drafted in a manner that allows Reclamation to take actions necessary to comply with all
719 applicable laws.

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723 **EQUAL EMPLOYMENT OPPORTUNITY**

724 17. The following language is required by Executive Order No. 11246 of September
725 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

737 (b) The Authority will, in all solicitations or advancements for employees
738 placed by or on behalf of the Authority, state that all qualified applicants will receive

739 consideration for employment without regard to race, color, religion, sex, sexual orientation,
740 gender identity, or national origin.

741 (c) The Authority will not discharge or in any other manner discriminate
742 against any employee or applicant for employment because such employee or applicant has
743 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
744 employee or applicant. This provision shall not apply to instances in which an employee who has
745 access to the compensation information of other employees or applicants as a part of such
746 employee's essential job functions discloses the compensation of such other employees or
747 applicants to individuals who do not otherwise have access to such information, unless such
748 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
749 proceeding, hearing, or action, including an investigation conducted by the employer, or is
750 consistent with the Authority's legal duty to furnish information.

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

757 (e) The Authority will comply with all provisions of Executive Order No.
758 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
759 Labor.

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

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

772 (h) The Authority will include the provisions of paragraphs (a) through (h) in
773 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
774 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
775 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
776 Authority will take such action with respect to any subcontract or purchase order as may be
777 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
778 for noncompliance: Provided, however, that in the event the Authority becomes involved in, or is

779 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
780 Authority may request the United States to enter into such litigation to protect the interests of the
781 United States.

782 **COMPLIANCE WITH CIVIL RIGHTS**

783 18. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
784 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
785 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
786 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
787 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
788 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
789 Interior and/or Bureau of Reclamation.

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

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

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

807 **CERTIFICATION OF NONSEGREGATED FACILITIES**

808 19. The Authority hereby certifies that it does not maintain or provide for its
809 employees any segregated facilities at any of its establishments and that it does not permit its
810 employees to perform their services at any location under its control where segregated facilities
811 are maintained. It certifies further that it will not maintain or provide for its employees any
812 segregated facilities at any of its establishments and that it will not permit its employees to
813 perform their services at any location under its control where segregated facilities are
814 maintained. The Authority agrees that a breach of this certification is a violation of the Equal
815 Employment Opportunity clause in this Agreement. As used in this certification, the term
816 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
817 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,

818 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
819 facilities provided for employees which are segregated by explicit directive or are in fact
820 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
821 disability, or otherwise. The Authority further agrees that (except where it has obtained identical
822 certifications from proposed subcontractors for specific time periods) it will obtain identical
823 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
824 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
825 will retain such certifications in its files; and that it will forward the following notice to such
826 proposed subcontractors (except where the proposed subcontractors have submitted identical
827 certifications for specific time periods):

828

829 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
830 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

836

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

845

AGREEMENT DRAFTING CONSIDERATIONS

846 21. This Agreement has been negotiated and reviewed by the Parties hereto, each of whom is
847 sophisticated in the matters to which this Agreement pertains. Articles [redacted] through [redacted] of this
848 Agreement have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be
849 considered to have drafted the stated articles.

850 IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day
851 and year first above written.

852 THE UNITED STATES OF AMERICA

853 By: _____
854 Regional Director
855 Interior Region 10: California-Great Basin
856 Bureau of Reclamation
857

858 San Luis & Delta-Mendota Water Authority
859 (SEAL)

860 By: _____
861 Chair, Board of Directors
862 Attest:

863 _____
864 Secretary
865