

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(SLRE Management and Cost Share Agreement), made this _____
2 day of _____, 20____, pursuant to the Reclamation Act of 1902, as
3 amended (32 Stat. 388; 43 U.S.C. Part 391); including the Act of February 21, 1911 (36 Stat.
4 925), the Reclamation Project Act of 1939, as amended (53 Stat. 1187; 43 U.S.C. Part 485); the
5 San Luis Act of 1960, as amended (Public Law 86-488, 74 Stat. 156); the Reclamation Safety of
6 Dams Act of 1978 (Public Law 95-578, 92 Stat. 2471); the Reclamation Reform Act of 1982, as
7 amended (Public Law 97-293, 96 Stat. 1261); and Section 305 of the Reclamation States
8 Emergency Drought Relief Act of 1991, enacted March 5, 1992 (106 Stat. 59), the Central
9 Valley Project Improvement Act of 1992, as amended (Public Law 102-575, 106 Stat. 4706); and
10 the Water Infrastructure Improvements for the Nation Act of 2016 (Public Law 114-322, 130
11 Stat. 1865); made between the UNITED STATES BUREAU OF RECLAMATION, hereinafter

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

16 **EXPLANATORY RECITALS**

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

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

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

31 [4th] WHEREAS, the United States was authorized to construct the San Luis Unit of
32 the CVP, a joint use project, shared with the State of California and administered through the
33 Department of Water Resources, hereinafter referred to as “DWR,” the operations of which are

34 coordinated between Reclamation and DWR consistent with the 1961 Agreement and all
35 supplements and amendments; and

36 [5th] WHEREAS, consistent with the San Luis Act of 1960, Reclamation and DWR
37 share responsibility for the costs of operation, maintenance, and replacement of B.F. Sisk Dam
38 and San Luis Reservoir, consistent with the 1961 Agreement Between the United States of
39 America and The Department of Water Resources of the State of California for the Operation of
40 the San Luis Unit and all supplements and amendments, Contract No. 14-06-200-9755 (1961
41 Agreement); and

42 [6th] WHEREAS, Reclamation and DWR share responsibility for coordinating
43 operations of the CVP and the State Water Project, hereinafter referred to as “SWP,” and for
44 meeting Sacramento-San Joaquin Delta water quality objectives and other operational
45 requirements pursuant to the 1986 Coordinated Operations Agreement between Reclamation and
46 DWR, as amended; and

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

50 [8th] WHEREAS, in accordance with the Reclamation Safety of Dams Act of 1978
51 (Public Law 95-578, 92 Stat. 2471) and 43 U.S.C. § 509 b, to develop additional project benefits,
52 through the B.F. Sisk Dam Safety of Dams Modification Report, in December 2020, the
53 Expansion Project was determined to be feasible; and

54 [9th] WHEREAS, consistent with Reclamation’s Directives and Standards, *Water and*
55 *Related Resources Feasibility Studies* (CMP 09-02), and *Developing Additional Project Benefits*
56 *in Conjunction with a Safety of Dams Modification Project* (FAC 06-05), Reclamation is

57 authorized to assess the feasibility of increasing San Luis Reservoir storage capacity in
58 conjunction with the Safety of Dams modifications to determine if there are additional project
59 benefits which are in the best interest of the United States; and

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

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

70 [12th] WHEREAS, notwithstanding any potential disagreements among the Parties
71 regarding background law, this Agreement governs the cost share and management of storage as
72 provided herein; and

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 Participating
83 Agencies who will collectively share in the costs and benefits of the Expansion Project, desire to
84 use the Expansion Project in a such a manner as may be mutually agreeable to the Parties hereto;
85 and

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

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

99 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

135 (k) “Federal Share of Historic Reservoir” shall mean the storage volume of
136 966 TAF in the Historic Reservoir.

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

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

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

144 (o) "Participating Agencies" shall mean those entities and/or organizations
145 that are represented by the Authority pursuant to the B.F. Sisk Dam Raise and Reservoir
146 Expansion Project Activity Agreement and all supplements and amendments.

147 (p) "Parties" shall mean Reclamation, on behalf of the United States, and the
148 Authority, on behalf of the Participating Agencies.

149 (q) "Project" shall mean the Central Valley Project owned by the United
150 States and managed by the Department of the Interior, Bureau of Reclamation

151 (r) "Project Water" shall mean any water, excepting in Article 1(a), that is
152 developed, diverted, stored, or delivered by the Secretary in accordance with the statutes
153 authorizing the Project and in accordance with the terms and conditions of water rights acquired
154 pursuant to California law.

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

158 (t) "San Luis Reservoir" shall mean the Historic Reservoir and the Expanded
159 Reservoir.

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

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

166 (w) "Substantial Completion" shall have the same meaning as defined in
167 *Completion of a Construction Activity: Transferring Reclamation Capital Assets Under*
168 *Construction (AUC) to Operation and Maintenance (O&M) Status (FAC 01-05)*, as amended or
169 supplemented.

170 (x) "Water Coordinator" shall mean the individual provided for in subarticle
171 4(i)(4) of this Agreement.

172 (y) "Year" shall mean the period from and including March 1 of each Calendar
173 Year through the last day of February of the following Calendar Year.

174 **TERM OF AGREEMENT**

175 2. Excepting termination under 2(d),

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

178 (b) If the Contracting Officer determines that the Authority is in material
179 breach of the Agreement, the Contracting Officer shall first notify the Authority in writing of the
180 specific purported deficiencies of the Authority in carrying out the terms and conditions of this
181 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this subarticle 2(b)
182 as expeditiously as is reasonably possible without the necessity of other relief at law or in equity.
183 If after the designated representative of the Authority has met with the Contracting Officer or
184 their designated representative and attempted in good faith and with the use of best efforts to

185 resolve any dispute arising from the purported deficiency an agreement is not reached, the
186 Contracting Officer may issue a notice of proposed termination, which includes the specific
187 deficiencies of the Authority's performance under this Agreement. The Authority shall have at
188 least one hundred and twenty (120) days from receipt of the written notice of proposed
189 termination to submit a plan that demonstrates a reasonable timeframe to correct all deficiencies
190 referred to in said written notice. Upon the Contracting Officer's approval of the plan to correct
191 all deficiencies, the Parties will in good faith coordinate on implementation of the plan to correct
192 all deficiencies including potential updates to the timeframe in the plan to correct all
193 deficiencies. Any termination pursuant to this Article shall be subject to the rights and
194 obligations of the Parties as more specifically set forth in this Agreement. Failure to remedy
195 these deficiencies shall result in termination of this Agreement, noticed in writing, consistent
196 with the provisions herein.

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

199 (i) The Authority may terminate this Agreement by sending
200 notice of termination to Reclamation, prior to Reclamation's issuance of solicitation of the
201 construction contract.

202 (ii) Reclamation may terminate this Agreement if the Authority
203 is in material breach of the Agreement and the Authority does not remedy the breach consistent
204 with the procedures described in subarticle 2(b) above.

205 (iii) If termination occurs pursuant to subarticles 2(b)(1)(i) or
206 2(b)(1)(ii) above, the Parties will meet and confer to review the appropriate recognition of the

207 Parties' contributed funds, as documented in applicable Exhibits to this Agreement, including
208 any outstanding financial obligations.

209 (2) Termination Following a Determination of Substantial Completion
210 of Construction of the Expansion Project.

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

214 (iii) Reclamation may terminate this Agreement if the Authority
215 is in material breach of this Agreement and the Authority does not remedy the breach consistent
216 with the procedures described in subarticle 2(b) above. Notwithstanding the foregoing, if
217 termination occurs, Reclamation will, in a timely manner, seek appropriate authority and
218 appropriations to reimburse the Authority's contributed funds, as documented in applicable
219 Exhibits to this Agreement, including any remaining financial obligations, in varied amounts
220 based on the number of years following the determination of Substantial Completion of
221 construction of the Expansion Project:

222 (a) 0 – 25 years: up to 100%

223 (b) 26 – 35 years: up to 50%

224 (c) 36 – 50 years: up to 25%

225 (d) After 51 years:0%

226 (iv) If this Agreement is terminated pursuant to subarticles
227 2(b)(2)(i)-(iii) above, Reclamation will manage the Authority-Managed Share of Expanded
228 Reservoir per interim agreement(s) based on provisions of subarticles 4(e)-(h) of this Agreement

229 until Reclamation provides the agreed-upon reimbursement or a new agreement for the
230 management of the expanded San Luis Reservoir and cost share of charges associated with the
231 raising of the B.F. Sisk Dam and increased storage capacity of the federally administered San
232 Luis Reservoir is executed. If full reimbursement occurs pursuant to subarticle 2(b)(2)(iii),
233 Reclamation would assume full benefits of the Project.

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

236 (c) As an alternative to termination of this Agreement, Reclamation and the
237 Participating Agencies, or a successor-in-interest to the Authority, may mutually agree to
238 negotiate a new agreement for the management of the expanded San Luis Reservoir and cost
239 share of charges associated with the raising of the B.F. Sisk Dam and increased storage capacity
240 of the federally administered San Luis Reservoir. The Parties intend that such new agreement(s)
241 would recognize the final storage benefits documented in Exhibits to this Agreement.

242 (d) The United States and the Authority jointly shall review this Agreement,
243 which review shall be performed at least every five (5) years. A more frequent review will occur
244 if determined to be appropriate by the Contracting Officer, or if requested by the Authority. The
245 review shall compare the relative success which each Party has had in meeting its objectives,
246 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a
247 Repayment Contract, a Spend Plan, and a Coordination Agreement, which agreements will be
248 exhibits to this Agreement. Exhibits to this Agreement, excluding Final Storage Benefits, will be
249 mutually agreed to and signed by the Parties and will be incorporated into this Agreement., As a
250 precondition to the performance of obligations in this Agreement, the Parties must successfully

251 execute the Spend Plan and the Contributed Funds Agreement no later than one hundred and
252 twenty (120) days after the execution of this Agreement, and the Authority must deposit all funds
253 identified as necessary in the Spend Plan. Exhibits to this Agreement may require modification
254 which may be accomplished without amendment to this Agreement.

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

259 **COST SHARE**

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

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

267 (1) Upon the determination of Substantial Completion of construction
268 of the Expansion Project, Reclamation and the Authority will meet and confer within a
269 reasonable time frame to complete a final accounting of Expansion Project benefits to determine
270 and mutually agree upon final storage benefits of the Expansion Project and the allocation to
271 Reclamation and the Authority. The final storage benefits attributable to the Parties will be
272 documented in an exhibit to this Agreement. Reclamation, in coordination with the Authority,

273 will assess the Expansion Project costs and make a determination as to which Expansion Project
274 costs are reimbursable and which Expansion Project costs are non-reimbursable.

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

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

282 (2) Planning Costs: In an effort to reach a finding that the Expansion
283 Project is feasible, certain planning level investigations were necessary and may continue to be
284 necessary prior to commencement of construction. Such planning investigations will be
285 consistent with Reclamation's Directives and Standards, *Water and Related Resources*
286 *Feasibility Studies* (CMP 09-02).

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

293 (4) Cultural Resource Management Costs: Either Party may fund
294 cultural studies, investigations, and mitigation needs consistent with this Agreement.

295 Reclamation will be responsible for all necessary consultations with state offices, Indian tribes,
296 and interested parties pursuant to Section 106 of the National Historic Preservation Act of 1966,
297 as amended. Reclamation will be responsible for compliance and coordination with the Native
298 American Graves Protection and Repatriation Act of 1990.

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

303 (6) Administrative Costs: Reclamation will reserve sufficient funding
304 from Federal appropriations to cover its administrative and management costs associated with
305 the Expansion Project. This amount will be considered part of the overall Federal contribution.
306 Reclamation will provide an estimate of the administrative costs for the Expansion Project which
307 will be reviewed with the Authority. The Authority will reserve sufficient funding to pay for its
308 administrative costs for the non-Federal share of the Expansion Project. These costs will be
309 considered contributions to the non-Federal share of the Expansion Project and reported pursuant
310 to subarticle 3(f) of this Agreement. Administrative costs include, unless otherwise defined by
311 contracts: project management, construction management, accounting and administrative
312 management, legal support and review, travel, general meetings related to the Expansion Project,
313 contract/agreement technical meetings and negotiations, and other supportive services and
314 activities necessary for the construction and operation of the Expansion Project prior to the
315 determination of Substantial Completion.

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

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

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

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

336 (d) There may be times when Reclamation provides funds to the Authority.
337 These funds will be provided through a financial assistance agreement. Any funds provided to

338 the Authority for the Expansion Project will be considered part of the cost of this Expansion
339 Project and shared in accordance with subarticle 3(a)(1) of this Agreement.

340 (e) Reclamation and the Authority will develop and execute a Spend Plan
341 containing mutually agreeable terms for the Authority to commit funding required under
342 §4007(b)(3)(B) and §4011(e)(2) of the WIIN Act and to track costs and account for funds
343 expended. The Spend Plan will be an exhibit to this Agreement.

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

347 (g) Repayment: As currently formulated, Reclamation does not anticipate the
348 need for a Repayment Contract for repayment of costs associated with the design and
349 construction of the Expansion Project. Reclamation and the Authority will, at the quarterly
350 check-ins described in subarticle 3(f) of this agreement, review the need for a Repayment
351 Contract. If a Repayment Contract is necessary, Reclamation will seek delegated authority from
352 the Commissioner to negotiate and execute said contract, which will be an exhibit to this
353 Agreement. The Parties will closely monitor the potential for reimbursable costs and the need for
354 a Repayment Contract and conduct any necessary financial analysis, in accordance with
355 *Irrigation Ability-to-Pay Analyses* (PEC 11-01), prior to executing any such contract.

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

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

362 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),
363 3(d), and 3(g) of this Agreement, would expressly survive termination of this Agreement.

364 **MANAGEMENT OF EXPANDED RESERVOIR**

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

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

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

378 (c) The Parties agree that Reclamation and DWR retain the sole discretion
379 over the operations of the Historic Reservoir.—Operations of the Expanded Reservoir will be

380 consistent with existing laws, agreements, and obligations and pursuant to the terms of this
381 Agreement and in consultation with the Authority through the Water Coordinator.

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

386 (e) Authority-Managed Share of Expanded Reservoir: The Water Coordinator
387 will manage and account for any water in the Authority-Managed Share of Expanded Reservoir
388 consistent with the provisions below. All water stored in the Authority-Managed Share of
389 Expanded Reservoir will be for the exclusive benefit of the Authority pursuant to this
390 Agreement.

391 (1) The Parties agree that the Participating Agencies, through the
392 Authority, possess the ability to partner with non-Participating Agency parties regarding the use,
393 marketing, and/or lease of capacity within the Authority-Managed Share of Expanded Reservoir
394 and/or the storage of water in the Authority-Managed Share of Expanded Reservoir. The
395 Authority shall indemnify the United States, its officers, employees, and agents of damage or
396 claim of any nature whatsoever for which there is any legal responsibility derived from these
397 third-party agreements.

398 (2) The Authority agrees to use the Authority-Managed Share of
399 Expanded Reservoir to store Acquired Water, and/or Project Water consistent with the terms of
400 this Agreement. If an Participating Agency has any water type available to store in the
401 Authority-Managed Share of Expanded Reservoir at the same time that Reclamation has Project

402 Water available to it to fill the Expanded Reservoir, and conveyance capacity is deemed
403 available, the Participating Agency may determine which water type will be (or is) stored on its
404 behalf in the Authority-Managed Share of Expanded Reservoir. Water stored in the Authority-
405 Managed Share of Expanded Reservoir will not be subject to the San Luis Rescheduling
406 Guidelines and will not be displaced, or “spill,” upon the filling of the Federal Share of Historic
407 Reservoir.

408 (3) Acquired Water

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

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

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

424 (iv) Reclamation will not use Acquired Water for any purpose
425 unless and until the Parties first mutually agree in writing to water or monetary compensation, or
426 a combination thereof, prior to its use.¹

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

432 (4) Project Water

433 (i) Article 3(a) Water: Following the CVP contract allocation
434 of Water Made Available under Article 3(a) of an Participating Agency Water
435 Service/Repayment Contract, the Water Coordinator may inform Reclamation as to the amount
436 of water to be accounted for under this subarticle, up to the maximum storage capacity of the
437 Authority-Managed Share of Expanded Reservoir.

438 (ii) Article 3(f) Water: Each Participating Agency holds a
439 Repayment Contract that provides a mechanism for Reclamation to make water available to each
440 Participating Agency in addition to the Participating Agency CVP contract allocation in a given
441 Year. This mechanism is most often described in Article 3(f) of the Participating Agency
442 Repayment Contracts, and so such water is referred to as “Article 3(f) water.” For the purpose of
443 this Agreement, the Contracting Officer will make Article 3(f) water available to each

¹ 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 .

444 Participating Agency to store in the Authority-Managed Share of Expanded Reservoir in addition
445 to the Participating Agency CVP contract allocation in every Year that Article 3(f) water is
446 available, as described below:

447 (a) Following the filling of the Federal Share of
448 Historic Reservoir, Reclamation will make a determination if Article 3(f) water is available to all
449 south-of-Delta CVP Water Service/Repayment Contractors with available storage or conveyance
450 capacity to take Article 3(f) water pursuant to their respective Water Service/Repayment
451 contracts.

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

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

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

461 (3) Water made available under this subarticle
462 4(e)(5)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled
463 for delivery at a later date in coordination with the Water Coordinator.

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

471 (a) Upon the initial CVP contract allocation on or about
472 February 20, if Reclamation announces a 0% contract allocation for south-of-Delta agricultural
473 contractors and determines a forecasted need (based on the 90% exceedance forecast) for Project
474 Water stored in the Authority-Managed Share of Expanded Reservoir for the purposes
475 enumerated in subarticle 4(e)(4)(iii) above, Reclamation will promptly notify the Authority of
476 this forecasted need. Reclamation, in coordination with the Water Coordinator, will update its
477 forecast and re-evaluate the forecasted need for use of Project Water stored in the Authority-
478 Managed Share of Expanded Reservoir throughout the Year or upon request by the Water
479 Coordinator supported by evidence justifying the request, including information regarding any
480 changes in forecasted need, the timing of such need, and the quantity of such need.

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

487 (c) On or around May 20, aligned with an updated May
488 forecast, Reclamation will notify the Authority of any Project Water in the Authority-Managed
489 Share of Expanded Reservoir that was not delivered for the purposes identified in subarticle
490 4(e)(4)(iii) above. Upon such notification, the Authority may resume deliveries out of the
491 Authority-Managed Share of Expanded Reservoir per updated schedules. Alternatively, if at any
492 time the contract allocation for south-of-Delta agricultural contractors increases above 0%, the
493 Authority may resume deliveries out of the Authority-Managed Share of Expanded Reservoir per
494 updated schedules.

495 (d) Reclamation intends to use all available CVP water
496 supplies stored in the Federal Share of Historic Reservoir and Federal Share of Expanded
497 Reservoir, and any other supply available to Reclamation intended to mitigate conditions of
498 drought consistent with the terms of the corresponding programs, to meet the purposes identified
499 in subarticle 4(e)(4)(iii) above prior to using any Project Water stored in the Authority-Managed
500 Share of Expanded Reservoir. Prior to the end of any Year in which Reclamation has used
501 Project Water stored in the Authority-Managed Share of Expanded Reservoir, Reclamation will,
502 in coordination with the Water Coordinator, perform an analysis to determine consistency with
503 this intent, and will true up reservoir accounting if needed.

504 (5) If Reclamation uses Acquired Water or Project Water stored in the
505 Authority-Managed Share of Expanded Reservoir to meet the enumerated CVP purposes above,
506 Reclamation shall reimburse or credit the Authority for the applicable OM&R costs. Therefore,
507 the quantity of Project Water or Acquired Water used by Reclamation will be included in the
508 calculation of that Year's Federal OM&R cost obligation allocated by DWR for the Expanded

509 Reservoir and will be deducted from the Authority's share of OM&R cost obligation for the Year
510 in which Acquired Water or Project Water was used by Reclamation.

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

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

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

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

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

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

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

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

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

546 (3) Provide for a dispute resolution process.

547 (4) Provide for a Water Coordinator. The Parties agree that a Water
548 Coordinator will be provided and paid for by the Authority who will coordinate with
549 Reclamation regarding the management of any water moving into, stored in, or moving out of
550 the Authority-Managed Share of Expanded Reservoir, who will account for the water in the
551 Authority-Managed Share of Expanded Reservoir, including losses, and who will be responsible

552 for the provisional data and coordinating with Reclamation on reconciliation at the end of the
553 contract year and prior to initial allocations of the following Year.

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

558 (6) Describe the monthly schedules that the Authority, through the
559 Water Coordinator, will submit to Reclamation to show the volumes of water to be delivered out
560 of the Authority-Managed Share of Expanded Reservoir, and Reclamation's duty to use all
561 reasonable means to deliver the water in accordance with the initial schedule submitted by the
562 contractor, or any written revision(s) deemed satisfactory to the Contracting Officer, thereto
563 submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to
564 be implemented.

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

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

570 **COORDINATION AND COOPERATION**

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

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

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

580 **EXISTING CONTRACTS**

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

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

587 **DISPUTE RESOLUTION**

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

597 Authority or the United States may have.

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

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

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

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

611 **OPINIONS AND DETERMINATIONS**

612 9. (a) Where the terms of this Agreement provide for actions to be based upon
613 the opinion or determination of either Party to this Agreement, said terms shall not be construed
614 as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
615 determinations. Both Parties, notwithstanding any other provisions of this Agreement, expressly
616 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
617 or unreasonable opinion or determination. Each opinion or determination by either Party shall be
618 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall

619 affect or alter the standard of judicial review applicable under Federal law to any opinion or
620 determination implementing a specific provision of Federal law embodied in statute or
621 regulation.

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

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

631 **NOTICES**

632 11. Any notice, demand, or request authorized or required by this Agreement shall be
633 deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered
634 to the Regional Director, California Great Basin Region, Bureau of Reclamation, 2800 Cottage
635 Way, Sacramento, CA, 95825, and on behalf of the United States, when mailed, postage prepaid,
636 or delivered to the San Luis & Delta-Mendota Water Authority, 842 6th Street, Los Banos, CA
637 93635.

638

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

640 12. The expenditure or advance of any money or the performance of any obligation of
641 the United States under this Agreement shall be contingent upon appropriation or allotment of
642 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
643 obligations under this Agreement. No liability shall accrue to the United States in case funds are
644 not appropriated or allotted.

645

OFFICIALS NOT TO BENEFIT

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

649

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

655

BOOKS, RECORDS, AND REPORTS

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

666

COMPLIANCE WITH LAWS

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

672 (b) The Contracting Officer shall have the right to make
673 determinations necessary to administer this Agreement that are consistent with its
674 expressed and implied provisions, the laws of the United States and the State of
675 California, and the rules and regulations promulgated by the Secretary of the Interior.
676 Such determinations shall be made in consultation with the Contractor.

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

683

684

EQUAL EMPLOYMENT OPPORTUNITY

685 17. The following language is required by Executive Order No. 11246 of September
686 24, 1965, in all government contracts unless and until it is superseded or amended.

687

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

688

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

698

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

702

703 (c) The Authority will not discharge or in any other manner discriminate
704 against any employee or applicant for employment because such employee or applicant has
705 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
706 employee or applicant. This provision shall not apply to instances in which an employee who has
707 access to the compensation information of other employees or applicants as a part of such
708 employee's essential job functions discloses the compensation of such other employees or
709 applicants to individuals who do not otherwise have access to such information, unless such
disclosure is in response to a formal complaint or charge, in furtherance of an investigation,

710 proceeding, hearing, or action, including an investigation conducted by the employer, or is
711 consistent with the Authority's legal duty to furnish information.

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

718 (e) The Authority will comply with all provisions of Executive Order No.
719 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
720 Labor.

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

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

733 (h) The Authority will include the provisions of paragraphs (a) through (h) in
734 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
735 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
736 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
737 Authority will take such action with respect to any subcontract or purchase order as may be
738 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
739 for noncompliance: Provided, however, that in the event the Authority becomes involved in, or is
740 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
741 Authority may request the United States to enter into such litigation to protect the interests of the
742 United States.

743

COMPLIANCE WITH CIVIL RIGHTS

744 18. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
745 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
746 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
747 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
748 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the

749 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
750 Interior and/or Bureau of Reclamation.

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

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

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

768 **CERTIFICATION OF NONSEGREGATED FACILITIES**

769 19. The Authority hereby certifies that it does not maintain or provide for its
770 employees any segregated facilities at any of its establishments and that it does not permit its
771 employees to perform their services at any location under its control where segregated facilities
772 are maintained. It certifies further that it will not maintain or provide for its employees any
773 segregated facilities at any of its establishments and that it will not permit its employees to
774 perform their services at any location under its control where segregated facilities are
775 maintained. The Authority agrees that a breach of this certification is a violation of the Equal
776 Employment Opportunity clause in this Agreement. As used in this certification, the term
777 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,
778 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
779 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
780 facilities provided for employees which are segregated by explicit directive or are in fact
781 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
782 disability, or otherwise. The Authority further agrees that (except where it has obtained identical
783 certifications from proposed subcontractors for specific time periods) it will obtain identical
784 certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000
785 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it
786 will retain such certifications in its files; and that it will forward the following notice to such
787 proposed subcontractors (except where the proposed subcontractors have submitted identical
788 certifications for specific time periods):

789

790 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
791 CERTIFICATIONS OF NONSEGREGATED FACILITIES

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

797 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

806 **AGREEMENT DRAFTING CONSIDERATIONS**

807 21. This Agreement has been negotiated and reviewed by the parties hereto, each of
808 whom is sophisticated in the matters to which this Agreement pertains. The double-spaced Articles of
809 this Agreement have been drafted, negotiated, and reviewed by the parties, and no one party shall be
810 considered to have drafted the stated articles. Single-spaced articles are standard articles pursuant to
811 Reclamation policy.

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

814 THE UNITED STATES OF AMERICA

815 By: _____
816 Regional Director
817 Interior Region 10: California-Great Basin
818 Bureau of Reclamation
819

820 San Luis & Delta-Mendota Water Authority
821 (SEAL)

822 By: _____
823 Chair, Board of Directors
824 Attest:

825 _____
826 Secretary
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