

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**

TABLE OF CONTENTS

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble .....	1
	Explanatory Recitals .....	2
1	Definitions.....	7
2	Term of Agreement.....	11
3	Cost Share .....	15
4	Management of Expanded Reservoir.....	20
5	Coordination and Cooperation.....	31
6	Existing Contracts.....	29
7	Dispute Resolution.....	30
8	Waiver of Non-compliance with Any Provision of this Agreement.....	31
9	Opinions and Determinations .....	29
10	Notices .....	32
11	Contingent on Appropriation or Allotment of Funds .....	32
12	Officials Not to Benefit.....	33
13	Assignment Limited - Successors and Assigns Obligated.....	33
14	Books, Records, and Reports .....	33
15	Compliance with Federal Reclamation Laws .....	33
16	Equal Employment Oppurtunity .....	34
17	Compliance with Civil Rights.....	35
18	Certification of Nonsegrated Facilities .....	36

19	Medium for Transmitting Payments .....	37
20	Agreement Drafting Considerations .....	37
	Signature Page.....	35

Exhibit A: Contributed Funds Agreement

Exhibit B: Spend Plan

Exhibit C: Repayment Contract

Exhibit D: Coordination Agreement

Exhibit E: OM&R Agreement

Exhibit F: Final Storage Benefits

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**

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

21 [2<sup>nd</sup>] 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 [3<sup>rd</sup>] 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 [4<sup>th</sup>] 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 [5<sup>th</sup>] 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 [6<sup>th</sup>] 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 [7<sup>th</sup>] 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 [8<sup>th</sup>] 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 [9<sup>th</sup>] 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 [10<sup>th</sup>] 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 [11<sup>th</sup>] 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 [12<sup>th</sup>] 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 [13<sup>th</sup>] 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 [14<sup>th</sup>] 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 [15<sup>th</sup>] 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 [16<sup>th</sup>] 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-CVP 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” or “CVP” shall mean the Central Valley Project  
114 owned by the United States and managed by the Department of the Interior, Bureau of  
115 Reclamation

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

121 (f) “Contracting Officer” shall mean the Secretary of the United States  
122 Department of the Interior or his/her duly authorized representative.



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

126 (h) “Coordination Agreement” shall mean the agreement provided for in  
127 subarticle 4(i) of this Agreement.

128 (i) “CVP Water” shall mean any water, excepting Acquired Water defined in  
129 Article 1(a), that is developed, diverted, stored, or delivered by the Secretary in accordance with  
130 the statutes authorizing the CVP and in accordance with the terms and conditions of water rights  
131 acquired pursuant to California law.

132 (j) “Expanded Reservoir” shall mean the combined volume of storage in the  
133 Federal Share and the Authority-Managed Share of the expanded San Luis Reservoir resulting  
134 from the Expansion Project.

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

139 (l) “Federal Share of Expanded Reservoir” shall mean the storage volume of  
140 the Expanded Reservoir commensurate with the Federal level of investment in the Expansion  
141 Project.

142 (m) “Federal Share of Historic Reservoir” shall mean the storage volume of  
143 966 TAF in the Historic Reservoir.

144 (n) “Historic Reservoir” shall mean the total storage volume of 2.028 Million  
145 Acre-Feet (MAF) in San Luis Reservoir.

146 (o) “Non-CVP Water” shall mean any water acquired that has not been  
147 appropriated or acquired by the United States and as further described herein.

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

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

154 (r) “Parties” shall mean Reclamation, on behalf of the United States, and the  
155 Authority, on behalf of the Participating Agencies.

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

159 (t) “San Luis Reservoir” shall mean the Historic Reservoir and the Expanded  
160 Reservoir.

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

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

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

171 (x) "Water Coordinator" shall mean the individual provided for in subarticle  
172 4(i)(4) of this Agreement.

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

175 **TERM OF AGREEMENT**

176 2. (a) This Agreement is effective on the date hereinabove written and will  
177 remain in full force until terminated, unless the precondition in subarticle 2(d) is not met.

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 written notice of proposed termination, which shall include the

187 specific deficiencies of the Authority's performance under this Agreement. The Authority shall  
188 have at least one hundred and twenty (120) days from receipt of the notice of proposed  
189 termination to submit a plan that demonstrates a reasonable timeframe to correct all deficiencies  
190 referred to in said notice. Upon the Contracting Officer's approval of the plan to correct all  
191 deficiencies, the Parties will in good faith coordinate on implementation of the plan to correct all  
192 deficiencies, including potential updates to the timeframe in the plan to correct all deficiencies.  
193 Any termination pursuant to this Article shall be subject to the rights and obligations of the  
194 Parties as more specifically set forth in this Agreement. Failure to remedy these deficiencies  
195 shall result in termination of this Agreement, noticed in writing, consistent with the provisions  
196 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 Expansion Project 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 (ii) 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 to reimburse the Authority's  
218 contributed funds, as documented in applicable Exhibits to this Agreement, including any  
219 remaining financial obligations, in varied amounts based on the number of years following the  
220 determination of Substantial Completion of construction of the Expansion Project. Under WIIN  
221 § 4007(b)(2), Reclamation may fund up to 50% of the Expansion Project costs so long as the  
222 benefits from the Expansion Project are commensurate with the Federal investment. Reclamation  
223 therefore commits to working with the Authority to seek additional authorization and  
224 appropriations to reimburse the Authority's contributed funds in the following amounts:

225 (a) 0 – 25 years: 100%

226 (b) 26 – 35 years: 50%

227 (c) 36 – 50 years: 25%

228 (d) After 51 years: 0%

229 (iii) If this Agreement is terminated pursuant to subarticles  
230 2(b)(2)(i)-(ii) above, Reclamation will manage the Authority-Managed Share of Expanded

231 Reservoir per interim agreement(s) based on provisions of subarticles 4(e)-(h) of this Agreement  
232 until Reclamation provides the agreed-upon reimbursement in subarticle 2(b)(2)(ii) or a new  
233 agreement for the management of the expanded San Luis Reservoir and cost share of charges  
234 associated with the raising of the B.F. Sisk Dam and increased storage capacity of the federally  
235 administered San Luis Reservoir is executed.

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

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

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

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

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

261 **COST SHARE**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

342 (e) Reclamation and the Authority will develop and execute a Spend Plan  
343 containing mutually agreeable terms for the Authority to commit funding required under  
344 §4007(b)(3)(B) and §4011(e)(2) of the WIIN Act and to track costs and account for funds  
345 expended. The Spend Plan will be an exhibit to this Agreement.

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

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

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

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

364 (h) The duties and obligations of the Parties under subarticles 3(a)(1), 3(b)(1),  
365 3(d), and 3(g) of this Agreement, would expressly survive termination of this Agreement.

366 **MANAGEMENT OF EXPANDED RESERVOIR**

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

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

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

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

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

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

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

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

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

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

409 (3) Acquired Water

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

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

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

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

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

433 (4) CVP Water

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

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

---

<sup>1</sup> 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.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

518 (1) CVP 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 CVP Water moves to the  
521 Federal Share of Expanded Reservoir; and

522 (3) If the CVP Water cannot be moved as described above, then  
523 Reclamation can make the CVP 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 CVP Water.

526 (g) Losses: All water in the Authority-Managed Share of Expanded Reservoir  
527 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 of  
532 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  
566 to conveyance capacity.

567 (j) Following a determination of Substantial Completion of construction of  
568 the 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) If any conflict arises between this Agreement and the water  
585 service/repayment contract of any Participating Agency or any non-Participating Agency partner,  
586 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 10. 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 6<sup>th</sup> Street, Los Banos, CA  
637 93635.

638

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

640 11. 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 12. 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 13. (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 14. 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 15. (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 determinations  
673 necessary to administer this Agreement that are consistent with its expressed and implied  
674 provisions, the laws of the United States and the State of California, and the rules and regulations  
675 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation  
676 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 16. 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 (a) The Authority will not discriminate against any employee or applicant for  
689 employment because of race, color, religion, sex, sexual orientation, gender identity, or national  
690 origin. The Authority will take affirmative action to ensure that applicants are employed, and that  
691 employees are treated during employment, without regard to their race, color, religion, sex,  
692 sexual orientation, gender identity, or national origin. Such action shall include, but not be  
693 limited to the following: employment, upgrading, demotion, or transfer; recruitment or  
694 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and  
695 selection for training, including apprenticeship. The Authority agrees to post in conspicuous  
696 places, available to employees and applicants for employment, notices to be provided by the  
697 Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

702 (c) The Authority will not discharge or in any other manner discriminate  
703 against any employee or applicant for employment because such employee or applicant has  
704 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
705 employee or applicant. This provision shall not apply to instances in which an employee who has  
706 access to the compensation information of other employees or applicants as a part of such  
707 employee's essential job functions discloses the compensation of such other employees or  
708 applicants to individuals who do not otherwise have access to such information, unless such  
709 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 17. (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 18. 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 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**  
 790 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

791 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
 792 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment

793 Opportunity clause. The certification may be submitted either for each subcontract or for all  
794 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
795 making false statements in offers is prescribed in 18 U.S.C. § 1001.

796 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

805 **AGREEMENT DRAFTING CONSIDERATIONS**

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

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

813 THE UNITED STATES OF AMERICA

814 By: \_\_\_\_\_  
815 Regional Director  
816 Interior Region 10: California-Great Basin  
817 Bureau of Reclamation

818 San Luis & Delta-Mendota Water Authority  
819 (SEAL)

820 By: \_\_\_\_\_  
821 Chair, Board of Directors

822 Attest:

823 \_\_\_\_\_  
824 Secretary