

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 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 [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 the aforementioned dam; and

50 [8th] WHEREAS, in accordance with the Reclamation Safety of Dams Act of 1978, as
51 amended (Public Law 95-578, 92 Stat. 2471, 43 U.S.C. § 509 b), to develop additional project
52 benefits, 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 Act”
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 Act §4007(b)(2), Reclamation and the
77 Authority agree to enter into this Agreement for up to 50% Federal share of the costs of the
78 Expansion Project including, but not limited to, planning, design, and construction, and as further
79 defined in this Agreement; and

80 [15th] WHEREAS, consistent with WIIN Act §4007(e), Reclamation, representing the
81 United States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion
82 Project Activity Agreement, as may be amended or supplemented, attached as Exhibit F,
83 representing Participating Agencies who will collectively share in the costs and benefits of the
84 Expansion Project, desire to use the Expansion Project in such a manner as may be mutually
85 agreeable to the Parties hereto; 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 (WIIN
90 Act §4007(b)(3)(B) and §4011(e)(2)); an OM&R Agreement; a Repayment Contract providing
91 for repayment of reimbursable obligations (WIIN Act §4007(b)(3)(C) and §4011(e)(2)), as
92 appropriate; a Spend Plan; and a Coordination Agreement, any of which may require further
93 delegation of authority from the Commissioner of Reclamation to negotiate and make a part of
94 this Agreement.

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,
98 the 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 non-Federal level of investment in
110 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 U.S.C. 395); and
126 attached as Exhibit A.

127 (h) “Coordination Agreement” shall mean the agreement provided for in
128 subarticle 4(i) of this Agreement; and attached as Exhibit C.

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

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

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

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

143 (m) “Federal Share of Historic Reservoir” shall mean the storage volume of
144 966 TAF in the Historic Reservoir.

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

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

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

153 (q) “Participating Agency(ies)” shall mean those entity(ies) and/or
154 organization(s) that are represented by the Authority pursuant to the B.F. Sisk Dam Raise and
155 Reservoir Expansion Project Activity Agreement and all supplements and amendments.

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

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

162 (t) “Spend Plan” shall mean the plan provided for in subarticle 3(e) of this
163 Agreement; and attached as Exhibit B.

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

168 (v) “Water Coordinator” shall mean the individual provided for in subarticle
169 4(i)(4) of this Agreement.

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

172 **TERM OF AGREEMENT**

173 2. (a) This Agreement is effective on the date hereinabove written and will
174 remain in full force until terminated, unless the condition in subarticle 2(e) is not met.

175 (b) If the Contracting Officer determines that the Authority is in material
176 breach of the Agreement, the Contracting Officer shall first notify the Authority in writing of the
177 specific purported deficiencies of the Authority in carrying out the terms and conditions of this
178 Agreement. It is the intent of the Parties that disputes be resolved pursuant to this subarticle 2(b)
179 as expeditiously as is reasonably possible without the necessity of other relief at law or in equity.
180 If after the designated representative of the Authority has met with the Contracting Officer or
181 their designated representative and attempted in good faith and with the use of best efforts to
182 resolve any dispute arising from the purported deficiency an agreement is not reached, the
183 Contracting Officer may issue a written notice of proposed termination which shall include the
184 specific deficiencies of the Authority’s performance under this Agreement. The Authority shall
185 have at least one hundred and twenty (120) days from receipt of the notice of proposed

186 termination to submit a plan that demonstrates a reasonable timeframe to correct all deficiencies
187 referred to in said notice. Upon the Contracting Officer's approval of the plan to correct all
188 deficiencies, the Parties will in good faith coordinate on implementation of the plan to correct all
189 deficiencies, including potential updates to the timeframe in the plan to correct all deficiencies.
190 Any termination pursuant to this Article shall be subject to the rights and obligations of the
191 Parties as more specifically set forth in this Agreement. Failure to remedy these deficiencies
192 shall result in termination of this Agreement, noticed in writing, consistent with the provisions
193 herein.

194 (1) Remedies Upon Termination Prior to a Determination of
195 Substantial Completion of Construction of the Expansion Project.

196 (i) The Authority may terminate this Agreement by sending
197 notice of termination to Reclamation, prior to Reclamation's issuance of solicitation of the
198 Expansion Project construction contract.

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

202 (iii) If termination occurs pursuant to subarticles 2(b)(1)(i) or
203 2(b)(1)(ii) above, the Parties will meet and confer to review the appropriate recognition of the
204 Parties' contributed funds, as documented in applicable exhibits to this Agreement, including any
205 outstanding financial obligations.

206 (2) Remedies Upon Termination Following a Determination of
207 Substantial Completion of Construction of the Expansion Project.

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

211 (ii) Reclamation may terminate this Agreement if the Authority
212 is in material breach of this Agreement and the Authority does not remedy the breach consistent
213 with the procedures described in subarticle 2(b) above. Notwithstanding the foregoing, if
214 termination occurs, Reclamation will, in a timely manner, seek to reimburse the Authority's
215 contributed funds, as documented in applicable exhibits to this Agreement, including any
216 remaining financial obligations, in varied amounts based on the number of years following the
217 determination of Substantial Completion of construction of the Expansion Project. Under WIIN
218 Act §4007(b)(2), Reclamation may fund up to 50% of the Expansion Project costs so long as the
219 benefits from the Expansion Project are commensurate with the Federal investment. Reclamation
220 therefore commits to working with the Authority to seek additional authorization and
221 appropriations to compensate the Authority for its contributed funds in the following amounts:

- 222 (a) 0 – 25 years: 100%
- 223 (b) 26 – 35 years: 50%
- 224 (c) 36 – 50 years: 25%
- 225 (d) After 51 years: 0%

226 (iii) If this Agreement is terminated pursuant to subarticles
227 2(b)(2)(i)-(ii) above, Reclamation will, consistent with applicable law, negotiate interim
228 agreement(s) with the Authority or other party(ies), including but not limited to members
229 represented by the Authority, under mutually agreeable terms and conditions to manage the

230 Authority-Managed Share of Expanded Reservoir based on provisions of this Agreement until
231 the agreed-upon compensation in subarticle 2(b)(2)(ii) is provided or a new agreement for the
232 management of the expanded San Luis Reservoir and cost share of charges associated with the
233 raising of the B.F. Sisk Dam and increased storage capacity of the federally administered San
234 Luis Reservoir is executed.

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

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

243 (d) The United States and the Authority jointly shall review this Agreement,
244 which review shall be performed at least every five (5) years. A more frequent review will occur
245 if determined to be appropriate by the Contracting Officer or if requested by the Authority. The
246 review shall compare the relative success which each Party has had in meeting its objectives,
247 including, but not limited to, the Contributed Funds Agreement, an OM&R Agreement, a Spend
248 Plan, and a Coordination Agreement, which agreements will be exhibits to this Agreement.
249 Exhibits A through D to this Agreement, will be mutually agreed to and signed by the Parties and
250 will be incorporated into this Agreement. In addition to Exhibits E and F to this agreement are
251 hereby incorporated into this Agreement.

252 (e) As a condition of this agreement, by no later than October 1, 2025, the
253 Parties must execute a Spend Plan and Contributed Funds Agreement and the Authority must
254 deposit all funds identified as necessary and due by that date in the Spend Plan. If there is a
255 failure to meet this condition, then this Agreement expires without further action from either
256 Party. This timeframe for depositing funds may be extended, through the Spend Plan, at the
257 discretion of the Contracting Officer. Exhibits to this Agreement may require modification which
258 may be accomplished without amendment to this Agreement.

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

263 (f) Use of the meet and confer or dispute resolution process described in
264 Article 7 is not a precondition to initiating termination under Article 2(b) of this Agreement.

265 **COST SHARE**

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

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

273 (1) Upon the determination of Substantial Completion of construction
274 of the Expansion Project, Reclamation and the Authority will meet and confer within a
275 reasonable time frame to complete a final accounting of the Expansion Project benefits to
276 determine and mutually agree upon final storage benefits of the Expansion Project and the
277 allocation to Reclamation and the Authority. The final storage benefits attributable to the Parties
278 will be documented in Exhibit E to this Agreement.

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

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

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

291 (3) Environmental Mitigation and Compliance Costs: Either Party may
292 fund environmental mitigation and compliance activities associated with this Agreement. These
293 activities may include, but are not limited to, contracts for technical assistance in environmental
294 mitigation, funding of environmental mitigation commitments, and any actions to ensure

295 consistency with the California Environmental Quality Act (CEQA) or Federal National
296 Environmental Policy Act (NEPA) laws and regulations.

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

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

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

317 contract/agreement technical meetings and negotiations, and other supportive services and
318 activities necessary for the construction and operation of the Expansion Project prior to the
319 determination of Substantial Completion.

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

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

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

334 (c) Reclamation and the Authority have proposed using their collective funds
335 to fund parts of the Expansion Project. A Contributed Funds Agreement may be necessary to
336 help facilitate the transfer of funds to Reclamation from the Authority. Such an agreement, if
337 needed, will be an exhibit to this Agreement. Any funds contributed to Reclamation for the

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

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

344 (e) Reclamation and the Authority will develop and execute a Spend Plan
345 containing mutually agreeable terms for the Authority to commit funding required under
346 §4007(b)(3)(B) and §4011(e)(2) of the WIIN Act and to track costs and account for funds
347 expended. The Spend Plan will be an exhibit to this Agreement.

348 (f) Prior to Substantial Completion, Reclamation and the Authority will
349 establish, at a minimum, quarterly check-ins to monitor actual expenditures related to the
350 Expansion Project relative to the Parties' respective funding shares, and to discuss other items,
351 including but not limited to, funding and any additional financial agreements. If there is a
352 deficiency in expenditures under the Spend Plan, the Parties will meet and confer to agree upon a
353 schedule to remedy the deficiency. If the Authority fails to resolve a deficiency within the
354 agreed-upon schedule, then Reclamation may seek an alternative cost share partner or pursue
355 other remedies prescribed in this Agreement.

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

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MANAGEMENT OF EXPANDED RESERVOIR

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

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

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

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

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

380 (e) Authority-Managed Share of Expanded Reservoir: The Water Coordinator
381 will manage and account for any water in the Authority-Managed Share of Expanded Reservoir
382 consistent with the provisions below. All water stored in the Authority-Managed Share of
383 Expanded Reservoir will be for the exclusive benefit of the Authority pursuant to this
384 Agreement.

385 (1) The Parties agree that the Participating Agencies, through the
386 Authority, possess the ability to partner with non-Participating Agency parties regarding the use,
387 marketing, and/or lease of capacity within the Authority-Managed Share of Expanded Reservoir
388 and/or the storage of water in the Authority-Managed Share of Expanded Reservoir. The
389 Authority shall indemnify the United States and its officers, employees, and agents for all
390 damages resulting from suits, actions, or claims of any nature from these third-party agreements.

391 (2) The Authority agrees to use the Authority-Managed Share of
392 Expanded Reservoir to store Acquired Water and/or CVP Water consistent with the terms of this
393 Agreement. If a Participating Agency has any water type available to store in the Authority-
394 Managed Share of Expanded Reservoir at the same time that Reclamation has CVP Water
395 available to it to fill the Expanded Reservoir, and conveyance capacity is deemed available, the
396 Participating Agency, through the Authority, may determine which water type will be (or is)
397 stored on its behalf in the Authority-Managed Share of Expanded Reservoir. Water stored in the
398 Authority-Managed Share of Expanded Reservoir will not be subject to the San Luis
399 Rescheduling Guidelines and will not be displaced, or “spill,” upon the filling of the Federal
400 Share of Historic Reservoir.

401 (3) Acquired Water

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

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

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

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

420 (v) Consistent with Section B.2.i of the M&I Water Shortage
421 Policy, as may be amended or superseded, the Contracting Officer will consider Acquired Water

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.

422 in the Authority-Managed Share of Expanded Reservoir as having been acquired by Participating
423 Agencies to meet individual public health and safety responsibilities and not subject to nor
424 counted against a Participating Agency’s available water.

425 (4) CVP Water

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

431 (ii) Article 3(f) Water: Each Participating Agency holds a
432 repayment contract that provides a mechanism for Reclamation to make water available to each
433 Participating Agency in addition to the Participating Agency’s CVP contract allocation in a
434 given Year. This mechanism is most often described in Article 3(f) of the Participating
435 Agencies’ repayment contracts, and so such water is referred to as “Article 3(f) water.” For the
436 purpose of this Agreement, the Contracting Officer will make Article 3(f) water available to each
437 Participating Agency to store in the Authority-Managed Share of Expanded Reservoir in addition
438 to the Participating Agency’s CVP contract allocation in every Year that Article 3(f) water is
439 available, as described below:

440 (a) Following the filling of the Federal Share of
441 Historic Reservoir, Reclamation will make a determination whether Article 3(f) water is
442 available to all south-of-Delta CVP water service/repayment contractors with available storage

443 or conveyance capacity to take Article 3(f) water pursuant to their respective water
444 service/repayment contracts.

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

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

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

454 (3) Water made available under this subarticle
455 4(e)(4)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled
456 for delivery at a later date in coordination with the Water Coordinator.

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

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

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

480 (c) On or around May 20, aligned with an updated May
481 forecast, Reclamation will notify the Authority of any CVP Water in the Authority-Managed
482 Share of Expanded Reservoir that was not delivered for the purposes identified in subarticle
483 4(e)(4)(iii) above. Upon such notification, the Authority may resume deliveries out of the
484 Authority-Managed Share of Expanded Reservoir per updated schedules. Alternatively, if at any
485 time the contract allocation for south-of-Delta agricultural contractors increases above 0%, the

486 Authority may resume deliveries out of the Authority-Managed Share of Expanded Reservoir per
487 updated schedules.

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

497 (5) If Reclamation uses Acquired Water or CVP Water stored in the
498 Authority-Managed Share of Expanded Reservoir to meet the purposes identified in subarticle
499 4(e)(4)(iii) above, Reclamation shall reimburse or credit the Authority for the applicable OM&R
500 costs. Therefore, the quantity of CVP Water or Acquired Water used by Reclamation will be
501 included in the calculation of that Year's Federal OM&R cost obligation allocated by DWR for
502 the Expanded Reservoir and will be deducted from the Authority's share of OM&R cost
503 obligation for the Year in which Acquired Water or CVP Water was used by Reclamation.

504 (f) Displacement of CVP Water: In order to store Acquired Water in the
505 Authority-Managed Share of Expanded Reservoir, the Water Coordinator, in coordination with
506 Reclamation, will if needed, move CVP Water out of the Authority-Managed Share of Expanded
507 Reservoir. CVP Water can be transferred, exchanged, or delivered subject to applicable statutes,

508 regulations, guidelines, and policies. If the CVP Water cannot be timely transferred, exchanged,
509 or delivered, it will move in the following way and in the following order of priority:

510 (1) CVP Water moves from the Authority-Managed Share of
511 Expanded Reservoir to the Historic Reservoir unless the Historic Reservoir is full.

512 (2) If the Historic Reservoir is full, then the CVP Water moves to the
513 Federal Share of Expanded Reservoir; and

514 (3) If the CVP Water cannot be moved as described above, then
515 Reclamation can make the CVP Water available to CVP contractors per existing CVP water
516 service/repayment contracts, and subject to applicable regulations, guidelines, and policies.
517 Reclamation will retain full discretion as to the disposition of the CVP Water.

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

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

530 (i) Coordination Agreement: Prior to the operation of the Expanded
531 Reservoir, Reclamation and the Authority will develop a Coordination Agreement to coordinate
532 and communicate and define roles and responsibilities prior to the storage of water in the
533 Expanded Reservoir which will be an exhibit to this Agreement. The Coordination Agreement
534 will, among other things:

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

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

538 (3) Provide for a dispute resolution process.

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

546 (5) Describe the coordination process referenced in subarticle
547 4(e)(4)(iii) above, including but not limited to the frequency and methods through which
548 Reclamation will share forecasting and allocation information with the Water Coordinator on
549 behalf of the Authority.

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

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

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

562 **COORDINATION AND COOPERATION**

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

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

572

EXISTING CONTRACTS

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6. (a) Nothing in this Agreement, in any way, alters, changes, or amends

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existing water service/repayment contracts with the United States, or supersedes, negates, or

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changes or is intended to change any past course of dealings, past practices or precedent.

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(b) If any conflict arises between this Agreement and the water

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service/repayment contract of any **Participating Agency** or any non-**Participating Agency** partner,

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then the respective water service/repayment contract takes precedence.

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DISPUTE RESOLUTION

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7. (a) Should any dispute arise concerning any provision(s) of this Agreement,

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

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

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action, or the Contracting Officer referring any matter to the Department of Justice, the Party

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

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

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

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

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

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Authority or the United States may have.

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(b) Reclamation shall have no responsibility to participate in or resolve

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disputes between the Authority and the **Participating Agencies** regarding this Agreement.

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

593 8. (a) The waiver by either Party to this Agreement as to any non-compliance
594 with any provision of this Agreement shall not be construed as a waiver of any other non-
595 compliance with any provision of this Agreement or as authority of the other Party to continue
596 such non-compliance with any provision of this Agreement or to make, do, or perform, or not
597 make, do, or perform, as the case may be, any act or thing which would constitute non-
598 compliance with any provision of this Agreement.

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

603 **OPINIONS AND DETERMINATIONS**

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

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

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

623 (D) AS PROVIDED FOR IN ARTICLE 4(E)1, 4(E)2, 4(B)(3)(V), 4(B)4(I), AND 4(B)4(II)
624 THE PARTIES RECOGNIZE CERTAIN THIRD-PARTY BENEFITS AND OBLIGATIONS
625 THAT WILL BE COORDINATED THROUGH THE AUTHORITY CONSISTENT WITH
626 EXHIBIT F.NOTICES

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

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

634 11. The expenditure or advance of any money or the performance of any obligation of
635 the United States under this Agreement shall be contingent upon appropriation or allotment of
636 funds. Absence of appropriation or allotment of funds shall not relieve the Authority from any
637 obligations under this Agreement. No liability shall accrue to the United States in case funds are
638 not appropriated or allotted.

639 **OFFICIALS NOT TO BENEFIT**

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

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

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

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

649 **BOOKS, RECORDS, AND REPORTS**

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

660 **COMPLIANCE WITH LAWS**

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

666 (b) The Contracting Officer shall have the right to make determinations
667 necessary to administer this Agreement that are consistent with its expressed and implied
668 provisions, the laws of the United States and the rules and regulations promulgated by the
669 Secretary of the Interior. Such determinations shall be made in consultation with the Authority.

670 (c) In protecting the interests of the United States, Reclamation’s contracts
671 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.
672 These laws may include environmental, civil rights, and cultural resources protection laws,
673 among others, as well as laws that may be later enacted. Reclamation’s water-related contracts

674 will be drafted in a manner that allows Reclamation to take actions necessary to comply with all
675 applicable laws.

676 **EQUAL EMPLOYMENT OPPORTUNITY**

677 16. The following language is required by Executive Order No. 11246 of September
678 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

694 (c) The Authority will not discharge or in any other manner discriminate
695 against any employee or applicant for employment because such employee or applicant has
696 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
697 employee or applicant. This provision shall not apply to instances in which an employee who has
698 access to the compensation information of other employees or applicants as a part of such
699 employee's essential job functions discloses the compensation of such other employees or
700 applicants to individuals who do not otherwise have access to such information, unless such
701 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
702 proceeding, hearing, or action, including an investigation conducted by the employer, or is
703 consistent with the Authority's legal duty to furnish information.

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

710 (e) The Authority will comply with all provisions of Executive Order No.
711 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
712 Labor.

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

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

725 (h) The Authority will include the provisions of paragraphs (a) through (h) in
726 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
727 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September
728 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
729 Authority will take such action with respect to any subcontract or purchase order as may be
730 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
731 for noncompliance: Provided, however, that in the event the Authority becomes involved in, or is
732 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
733 Authority may request the United States to enter into such litigation to protect the interests of the
734 United States.

735 COMPLIANCE WITH CIVIL RIGHTS

736 17. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
737 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
738 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
739 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.
740 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
741 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
742 Interior and/or Bureau of Reclamation.

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

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

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

760 **CERTIFICATION OF NONSEGREGATED FACILITIES**

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

781 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**
782 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

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

788

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

797

AGREEMENT DRAFTING CONSIDERATIONS

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

