UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SAN LUIS & DELTA-MENDOTA WATER AUTHORITY TO TRANSFER THE OPERATION, MAINTENANCE AND REPLACEMENT AND CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES RELATED TO THE SAN LUIS AND DELTA-MENDOTA CANALS, C.W. “BILL” JONES PUMPING PLANT, DELTA-MENDOTA CANAL/ CALIFORNIA AQUEDUCT INTERTIE PUMPING PLANT, O’NEILL PUMPING/GENERATING PLANT, SAN LUIS DRAIN AND ASSOCIATED WORKS

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Signature Page

Exhibit A: List of Project Works
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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SAN LUIS & DELTA-MENDOTA WATER AUTHORITY TO TRANSFER THE OPERATION, MAINTENANCE AND REPLACEMENT AND CERTAIN FINANCIAL AND ADMINISTRATIVE ACTIVITIES RELATED TO THE SAN LUIS AND DELTA-MENDOTA CANALS, C.W. “BILL” JONES PUMPING PLANT, DELTA-MENDOTA CANAL/ CALIFORNIA AQUEDUCT INTERTIE PUMPING PLANT, O’NEILL PUMPING/GENERATING PLANT, SAN LUIS DRAIN AND ASSOCIATED WORKS

THIS AGREEMENT, effective the ____ day of __________, ______, (“Effective Date”) in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat.388), and the acts amendatory thereof or supplementary thereto, including Section 5 of the Act of August 13, 1914 (38 Stat. 687), all collectively hereinafter referred to as the Federal Reclamation laws, between the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the Authority, a public agency of the State of California, duly organized, existing, and acting pursuant to the laws of the State of California, the United States and the Authority are referred to collectively as the “Parties,” and individually as a “Party.”

WITNESSETH, That:

RECITALS

a. The United States Bureau of Reclamation has constructed the Delta Division and San Luis Unit of the Central Valley Project (Project) for storage, diversion, carriage and
distribution of water for agricultural, flood control, municipal, industrial, domestic and other
beneficial uses and purposes; and

b. The Authority represents water users who contract with the United States for
water service provided by the Delta Division, San Felipe Division, and San Luis Unit of the
Project; and

c. The United States operates the Delta Division and San Luis Unit of the Project for
the benefit, among others, of the water users represented by the Authority; and

d. The Authority operated and maintained certain Delta Division and San Luis Unit
facilities pursuant to that certain Cooperative Agreement No. 3-FC-20-10820 Cooperative
Agreement between the Parties dated September 30, 1992, and as modified on October 7, 1993;
and

e. The Authority operates and maintains certain Delta Division and San Luis Unit
facilities pursuant to that certain Agreement to Transfer the Operation, Maintenance, and
Replacement (OM&R) and Certain Financial and Administrative Activities Related to the San
Luis and Delta-Mendota Canals, Tracy Pumping and O'Neill Pumping/Generating Plant, San
Luis Drain and Associated Works, Contract No. 8-07-20-X0354 (Transfer Agreement) between
the Parties for a term of twenty-five (25) years, effective March 1, 1998, as amended
February 18, 2003; and

f. For the recovery and collection of OM&R Costs associated with the delivery of
Settlement Water, the Authority entered that certain Memorandum of Understanding Relating to
Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water
Delivered Through Certain Central Valley Project Facilities (MOU) effective March 1, 1998,
amended September 1, 2002, with the Friant Water Users Authority, which was then assigned to
the Friant Water Authority effective June 30, 2004, with said change incorporated into the
Transfer Agreement through a second amendment effective June 30, 2004; and

g. The Authority requested initiation of the renewal process for the continued
OM&R of the Project Works under Contract No. 8-07-20-X0354 by letter dated June 25, 2019;
and

h. The Authority has demonstrated its ability to operate and maintain such facilities
to the satisfaction of the Contracting Officer and in a manner which best and most economically
serves the water users relying on those facilities; and

i. It is deemed to be in the best interests of the Parties and the Project’s water users
that the continued OM&R, as well as certain administrative and financial activities, of the Project
Works be transferred to the Authority as the Operating Non-Federal Entity by renewing the
Transfer Agreement; and

j. The United States also believes it to be in the best interests of the Parties and the
Project’s water users to transfer to the Authority the administrative and financial responsibility to
continue to perform and hereafter fund the Authority’s OM&R of the Project Works while the
United States retains the responsibility to fund Capital Improvement costs of the Project Works;
and

k. The Authority is willing to assume the OM&R of the Project Works as the
Operating Non-Federal Entity and perform the enumerated administrative and financial activities
in accordance with the terms and conditions herein set forth; and

l. The National Environmental Policy Act compliance requirement for execution of
this Agreement has been met by the Categorical Exclusion dated November 12, 2019; and
In consideration of the mutual and dependent covenants herein contained, the
Parties mutually agree as follows:

DEFINITIONS

1. When used in this Agreement, the term:

(a) “Capital Improvement” shall mean any activity that extends the useful life
of a property, plant or equipment asset, expands the capacity or efficiency of an asset, or
otherwise upgrades an asset to serve needs different from, or significantly greater than, an asset’s
current use, or as defined in the Blue Book entitled Federal Replacements, Units, Service Lives,
Factors, as it exists on the date of this Agreement or in accordance with Federal law and
accounting standards, or any other regulations, policies, guidelines, or instructions adopted
thereunder.

(b) “Irrigation Water” shall mean the use Project Water or Other Water to
irrigate land primarily for the production of commercial agricultural crops or livestock, and
domestic and other uses that are incidental thereto.

(c) “Municipal and Industrial Water” or “M&I Water” shall mean the use of
Project Water or Other Water for municipal, industrial, and miscellaneous purposes not falling
under the definition of “Irrigation Water” or within another category of water use under
applicable Federal authority.

(d) “Operation, Maintenance and Replacement” or “OM&R” shall mean the complete operation and maintenance of the Project Works, including performing, funding, and financing such repairs and replacements as are normally considered part of annual operation and maintenance functions and not considered Capital Improvement costs of the Project in accordance with the Blue Book entitled Federal Replacements, Units, Service Lives, Factors, as it exists on the date of this Agreement or in accordance with Federal law or any other regulations,
policies, guidelines or instructions adopted thereunder. OM&R shall include the performance, funding, and financing of emergency or unusual operation and maintenance or extraordinary operation and maintenance costs, unusual or extraordinary repair or replacement costs, and betterment costs, but only to the extent the costs thereof are not considered Capital Improvement costs of the Project in accordance with the *Blue Book* referenced above as it exists on the date of this Agreement or in accordance with Federal law or any other regulations, policies, guidelines or instructions adopted thereunder. Notwithstanding the foregoing, OM&R shall also include Capital Improvements, as that term is defined in Article 1(a) which the Authority chooses to accomplish and finance pursuant to Article 5(b).

(e) “Other Water” shall mean water other than water conveyed or delivered pursuant to Water Delivery Contracts which the United States has a legal or contractual obligation to convey or deliver through the Project Works. Other Water includes, without limitation, water to be conveyed through the Project Works (1) pursuant to contracts under the Warren Act (43 USC 523, et seq.), Section 305 of the Act of March 5, 1992 (106 Stat. 59), Section 3408(c) of the Central Valley Project Improvement Act (106 Stat. 4706), and Section 215 of the Reclamation Reform Act of 1982 (96 Stat. 1263); (2) under other wheeling or conveyance agreements binding on the Secretary; (3) in accordance with agreements for conveyance of water to wildlife refuges and wildlife management areas; and (4) to satisfy other legally imposed environmental obligations of the Secretary.

(f) “Party Entitled to Utilize or Receive Other Water” shall mean the party required to pay the Authority the amounts described in Article 12 in connection with the delivery of Other Water. In the case of Other Water delivered to satisfy agreements for conveyance of water to wildlife refuges and wildlife management areas, as well as other legally imposed
environmental obligations of the Secretary, the Party Entitled to Utilize or Receive Other Water
(and therefore required to pay the Authority the amounts described in Article 12 in connection
with the delivery thereof) shall be the Contracting Officer.

(g) “Project” shall mean the Central Valley Project owned by the United
States and managed by the Department of Interior, Bureau of Reclamation.

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

(i) “Project Works” shall mean those facilities listed or described on the
attached Exhibit A, which are incorporated herein by this reference, including: the Delta-
Mendota Canal and related in-line control facilities; wasteways, laterals, holding reservoirs,
turnouts and measuring devices, associated water level control devices and water level recording
instruments; appurtenant equipment, structures and maintenance buildings; the Jones Pumping
Plant; the O'Neill Pumping/Generating Plant; the Delta-Mendota Canal/California Aqueduct
Intertie Pumping Plant; the San Luis Drain; the Kesterson Reservoir; and such other facilities as
the Parties may agree by modification of Exhibit A, without amending this Agreement.

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

(k) “Settlement Contractors” shall mean those contractors listed on the
attached Exhibit B entitled to receive certain water service through the Project Works without
charge.

(l) “Settlement Water” shall mean the water the Settlement Contractors are
entitled to receive from the Project Works without charge.
(m) “Substantial Change” shall mean a modification in, or addition to, Project Works which involves changes in the original design intent, function, and/or operational parameters of the facility, or changes in benefits of the Project Works, including non-routine maintenance activities that involve construction or reconstruction of a portion of the facility.

(n) “Water Delivery Contract” shall mean (1) any contract entered into by the Secretary under the provisions of Sections 9(c), 9(d) or 9(e) of the Reclamation Project Act of 1939 [43 USC 485h (c), (d) and (e)] or Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4706) pursuant to which Project Water is to be supplied from or through the Project Works and (2) any exchange contract, water rights settlement contract or similar agreement pursuant to the terms of which water is to be supplied by the Secretary from or using the Project Works.

(o) “Water Delivery Contractor” shall mean a party holding a Water Delivery Contract with the United States.

(p) “Year” shall mean the period from and including the first day of March of each calendar year through and including the last day of February of the following calendar year.

TERM OF AGREEMENT

2. (a) This Agreement shall be effective as of the Effective Date and shall remain in effect for thirty-five (35) years thereafter; Provided, That this Agreement is not terminated at an earlier date pursuant to Article 2(b) below. Subject to modification acceptable to the Contracting Officer and the Authority, the Authority shall have the option to renew this Agreement for successive periods not to exceed thirty-five (35) years each by providing written notice of such to the Contracting Officer not more than one (1) year, but not less than six (6) months, prior to the end of the then-current term, unless by mutual agreement to renew sooner.
(b) The Contracting Officer may terminate this Agreement at any time before the expiration of its term whenever the Contracting Officer determines that the Authority is in substantial violation of the Agreement as provided in this Article 2(b); Provided, That prior to the effective date of any such termination, the Contracting Officer shall first notify the Authority in writing of, the specific purported deficiencies of the Authority in carrying out the terms and conditions of this Agreement. It is the intent of the Parties that disputes be resolved pursuant to this Article 2(b) as expeditiously as is reasonably possible without the necessity of other relief at law or in equity. If after the designated representative of the Authority has met with the Contracting Officer or his or her designated representative and attempt in good faith and with the use of best efforts to resolve any dispute arising from the purported deficiency an agreement is not reached, the Contracting Officer may issue a notice of proposed termination, which includes the specific deficiencies of the Authority’s performance under this Agreement. The Authority shall have at least ninety (90) days from receipt of the written notice of proposed termination to correct all deficiencies referred to in said written notice; Provided, That in the event of a condition which threatens the safety or integrity of the Project Works, the Contracting Officer may specify a shorter correction period which the Contracting Officer determines to be appropriate under the circumstances. In the event the Authority does not correct all deficiencies referred to in said written notice within the applicable period, the Contracting Officer may thereafter terminate this Agreement upon thirty (30) days prior written notice to the Authority. Any termination pursuant to this Article shall be subject to the rights and obligations of the Parties as more specifically set forth in this Agreement.

(c) The Authority may at any time, upon giving twelve (12) months written notice, terminate this Agreement; Provided, That such termination shall not relieve the Authority
of any of its duties, liabilities or obligations accruing from the effective date of this Agreement to
the effective date of such termination, except insofar as the Authority lacks funding to perform
such obligations due to a failure by the United States to meet any of its obligations under this
Agreement.

(d) Upon any termination of this Agreement, the United States will take over
from the Authority the care, OM&R of the Project Works and the Authority shall transfer to the
United States (1) title to all tools, vehicles, supplies, and equipment transferred under Article
3(b) of the original agreement 8-07-20-X0354 (to the extent still on hand) or purchased by the
Authority for the purposes of this Agreement, and (2) any funds in its possession which were
collected for, or allocated to, the OM&R of the Project Works for the then-current Year which
are in excess of the obligations of the Authority for the OM&R of the Project Works. All other
funds and reserves in the Authority’s possession, including without limitation all other funds
collected for, or allocated to, the OM&R of the Project Works and the reserve funds established
under Article 14 shall be retained or distributed by the Authority in accordance with the direction
of the Authority’s board of directors.

(e) An Agreement review must be performed at least every fifteen (15) years.
A more frequent review will be established if determined to be appropriate by the Contracting
Officer. The review and update will be limited to focus on this Agreement’s standard articles
and incorporation of any new statutory requirements applicable to this Agreement.

OPERATION AND MAINTENANCE OF PROJECT WORKS

3. (a) The Contracting Officer has transferred, and the Authority has accepted
and assumed the care, OM&R of the Project Works. Title to the Project Works will remain in
the name of the United States, unless otherwise provided by the Congress of the United States.

(b) The Authority, without expense to the United States, will care for, OM&R
the Project Works in full compliance with the terms of this Agreement and in such a manner that
the Project Works remain in good and efficient condition, subject to exercise of discretion to fund and carry out Capital Improvements, as described below in Article 5(b).

(c) Necessary repairs of the Project Works will be made promptly by the Authority. In case of unusual conditions or serious deficiencies in the OM&R of the Project Works threatening or causing interruption of water service, the Contracting Officer may issue to the Authority a special written notice of those necessary repairs. Except in the case of an emergency, the Authority will be given sixty (60) days to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Authority fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within sixty (60) days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by the Authority as directed by the Contracting Officer.

(d) The Authority will not make any Substantial Changes in the Project Works without first obtaining written consent of the Contracting Officer.

(e) The Authority agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character, except for intentional torts committed by employees of the United States, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other duties of the Authority or the United States on Project Works required under this Agreement, regardless of who performs those duties.

(f) Omitted.

(g) In the event the Authority is found to be operating the Project Works or any part thereof in violation of this Agreement or the Authority is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this Agreement, then upon the election of the Contracting Officer, the United States may take over from the Authority the care, OM&R of the Project Works by giving written notice to the Authority of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer the Authority will pay to the United States, annually in advance, the cost of the OM&R of the Project Works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, OM&R of the Project Works may be transferred back to the Authority.

(h) In addition to all other payments to be made by the Authority under this Agreement, the Authority will pay to the United States, following the receipt of a statement from the Contracting Officer, all reimbursable miscellaneous costs to be incurred by the United States for any work involved in the administration and supervision of this Agreement.

(i) Nothing in this Article will be deemed to waive the sovereign immunity of the United States.
4. The Authority has been the Operating Non-Federal Entity for the Project Works since 1992. Joint inspections of the Project Works have been conducted by the United States and the Authority since 1997. The inspection report signature pages are attached to this Agreement as Exhibit G.

CAPITAL IMPROVEMENTS AND REPAIRS

5. (a) Nothing in this Agreement shall be construed to require the Authority to make or fund improvements, modifications, replacements or repairs of any nature to the Project Works, the costs of which should be or will be added to the Capital Improvement costs of the Project. The identification of Capital Improvements shall be made in accordance with Federal law or any regulations, policies, guidelines or instructions adopted thereunder. The Contracting Officer’s determination of whether the costs of any improvements, modifications, replacements or repairs should be or will be added to the Capital Improvement costs of the Project shall be accepted by the Authority after the Contracting Officer has conferred in good faith with the Authority with respect thereto; Provided, That such determination shall be subject to review by a court having jurisdiction over the dispute. The Authority shall act in accordance with such determination unless and until it is reversed or modified. The Authority shall submit annual OM&R work forecasts at the start of each Year. The OM&R work forecasts shall include all work to project facilities that is projected to be done in the following Year and work to be done in the next three (3) Years. Following the completion of a Review of Operation and Maintenance (RO&M) examination of the Project Works as set forth in Article 11 of this Agreement, if that Review examination identifies a potential Capital Improvement, and at such other times as the Parties agree are necessary, the Authority and the Contracting Officer shall confer to identify any Capital Improvements planned or necessary for the Project Works for the
next ten (10) years and agree upon the mechanism for accomplishing and financing the Capital Improvements.

(b) Notwithstanding the provisions of Article 5(a), in the event the Authority identifies Capital Improvements it deems necessary for the OM&R of the Project Works and the Contracting Officer is unable or unwilling to provide a mechanism for accomplishing and financing such Capital Improvements, the Authority may proceed with the accomplishment and financing of such Capital Improvements and deem the costs thereof to be OM&R costs hereunder, regardless of whether such costs are added to the Capital Improvement costs of the Project under Article 5(a). Such Capital Improvements may include, without limitation, the acquisition, repair or replacement of personal property (such as motor vehicles and heavy equipment) and the construction or improvement of structures utilized by the Authority in connection with the OM&R of the Project Works.

PERFORMANCE WORK STATEMENT, EMERGENCY ACTION PLANS AND NOTIFICATIONS

6. (a) The Authority shall maintain the Project Works in such a manner that the Project Works shall remain in good and efficient condition for the storage, diversion and carriage of water. The Authority shall perform the OM&R of the Project Works consistent with the guidelines provided by existing Designer’s Operating Criteria, standard operation procedures (SOPs) and/or manufacturer’s technical manuals for the Project Works, in accordance with such sound engineering practices as have been or may be developed for the Project Works, and in accordance with applicable Federal, State and local environmental laws. Deviations from or changes to these standards shall be approved by the Contracting Officer.
(b) The Authority shall prepare such Emergency Action Plans (EAPs) for the Project Works as are required by governmental agencies with jurisdiction over the Authority’s operations. The Authority shall furnish copies of any such plans to the Contracting Officer.

(c) In addition to implementing Article 6(a), the Authority shall notify the Contracting Officer as soon as reasonably practicable after initial observation by the Authority of any event or situation which threatens (1) the safety or integrity of the Project Works, or (2) the well-being of humans or property located adjacent to the Project Works. Notwithstanding Article 26, such notification shall be made telephonically or by via electronic mail rather than by mail.

(d) The Authority shall submit monthly reports to the Contracting Officer outlining all work accomplished.

(e) The Authority shall annually review, and as necessary update, all SOPs and EAPs and provide such updates to the Contracting Officer.

(f) The performance work statement (PWS) will consist of the OM&R work forecast, current SOPs for all the major facilities, and EAPs as applicable.

ADMINISTRATION OF FEDERAL PROJECT LANDS

7. (a) (1) The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, OM&R of the Project Works (collectively, “Project Work Lands”) may be used by the Authority for such purposes without being charged any administrative fees therefor. The Authority shall ensure that no unauthorized encroachment occurs on Federal Project lands and rights-of-way. The Authority does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

Where there are existing unauthorized encroachments as of the Effective Date on Project Works Lands, the Authority will work with the Contracting Officer to resolve the encroachments to the Contracting Officer’s satisfaction. For the purposes of this Agreement “encroachment” means...
any unauthorized building, structure, or object of any kind or character placed, into, over, or under any Project Works Lands.

(2) The Contracting Officer shall not issue any rights-of-way across Project Works Lands or any leases, licenses, permits, or special-use agreements involving Project Works Lands until the Contracting Officer has determined that the grant is compatible with the Project purposes and with the OM&R of the Project Works. The Contracting Officer shall issue such rights-of-way across Project Works Lands or any leases, licenses, permits or special-use agreements involving Project Works Lands only after offering the Authority the opportunity to provide appropriate comment concerning the request. Requests for such grants that are received by the Authority shall be referred to the Contracting Officer along with appropriate comment concerning the request. A copy of all such grants issued by the Contracting Officer shall be provided to the Authority.

(b) The Authority shall regularly inspect the Project Works Lands to identify any trespass and determine the general condition of the real property itself. Cases of trespass shall be corrected, where possible, by the Authority. Trespass cases which the Authority feels may require undue time and/or expense to correct shall be referred without delay to the Contracting Officer for resolution.

(c) The Authority shall review land-use requests for compatibility within Project Works Lands. The Contracting Officer shall remain responsible for review and action upon all requests for use of the Project Works or Project Works Lands unless a delegation of authority to the Authority is otherwise provided for by the express written consent of the Contracting Officer.

(d) The United States retains responsibility for compliance with the National Historic Preservation Act of 1966, and the Native American Graves Protection and Repatriation
Act of 1990. The Authority will notify the Contracting Officer and, only when on tribal land, also notify the appropriate tribal official, immediately upon the discovery of any potential historic properties or Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

**OVERSIGHT AND PARTICIPATION**

8. (a) The Contracting Officer shall, to the greatest extent possible, afford the Authority the opportunity to review and comment on preliminary and final development plans, environmental documents and other documents which affect the Project Works. The Authority’s comments shall be provided to the Contracting Officer; and

(b) The Parties shall, to the greatest extent possible, afford each other the opportunity to participate with city, county, State and Federal governments, or governmental groups and private concerns in meetings, hearings and other activities affecting the Project Works. The Parties shall keep each other informed of these activities.

**DELIVERY OF WATER BY THE AUTHORITY**

9. (a) The Authority shall convey and distribute water in and from the Project Works in accordance with the directives of the Contracting Officer so that the Contracting Officer can satisfy all valid water delivery obligations of the United States from the Project Works, including without limitation all water delivery obligations of the United States under Water Delivery Contracts and for the delivery of Other Water. The Authority shall deliver water to each Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water entitled thereto from the Project Works through turnouts or such temporary diversion facilities as are specified in then-existing Water Delivery Contracts or other arrangements or agreements relating to Other Water specifying such turnouts and delivery points, or as may be agreed to by such Water Delivery Contractor(s) or Party Entitled to Utilize or Receive Other Water, the Authority, and the Contracting Officer.
(b) A complete list of all valid obligations of the United States to convey and
distribute water in and from the Project Works is attached as Exhibit C and incorporated herein
by this reference. Exhibit C indicates whether each obligation is under a Water Delivery
Contract or is for the delivery of Other Water. The Contracting Officer shall modify Exhibit C
as such obligations change or as new obligations are added.

(c) Prior to the Contracting Officer entering into, renewing or amending any
Water Delivery Contract or any other agreement which requires or permits the conveyance of
water through any of the Project Works, the Contracting Officer shall consult with the Authority
about the terms of such contract action, and shall provide the Authority the opportunity to review
and comment thereon. Any such contract action shall be taken by the Contracting Officer only
after the Contracting Officer has given due consideration to, and has taken all reasonable actions
to mitigate the impacts of such contract action on (1) the quantity or quality of water available to
Water Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, as of the date
of this Agreement, and (2) the ability of the Authority to perform its obligations under this
Agreement. The Contracting Officer shall provide the Authority a copy of all contracts entered
into with Water Delivery Contractors or Parties Entitled to Utilize or Receive Other Water
utilizing the Project Works for delivery or conveyance.

RESOLUTION OF DISPUTES

10. Should any dispute arise concerning delivery or conveyance of water by the
Authority through the Project Works between the Authority, any Water Delivery Contractor(s)
and/or any Party(ies) Entitled to Utilize or Receive Other Water from or through the Project
Works, which the Authority concludes cannot be resolved through negotiations with the other
party(ies) to the dispute, the Authority shall provide its position with respect to such dispute to
the other party(ies) thereto in writing. Within sixty (60) days after such notice is provided, the
dispute shall be referred to the Contracting Officer for resolution. The Contracting Officer's
resolution of the dispute shall be accepted by the Authority and other party(ies) thereto as final
and conclusive and the Authority and the other party(ies) shall promptly comply with said
decision and shall operate the Project Works in conformance with such decision until the same is
stayed, reversed or modified by a decision of a court of competent jurisdiction.

EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
REPORTS FOR DETERMINING ADEQUACY OF OM&R

11. (a) The Contracting Officer may examine the following: the Authority’s
books, records, and reports with respect to OM&R obligations under this Agreement; the Project
Works being operated by the Authority; the adequacy of the OM&R program; the reserve fund;
and the water conservation program including the water conservation fund, if applicable.
Notwithstanding title ownership, where the United States retains a financial, physical, or liability
interest in facilities either constructed by the United States or with funds provided by the United
States, the Contracting Officer may examine any or all of the Project Works providing such
interest to the United States.

(b) The Contracting Officer may, or the Authority may ask the Contracting
Officer to, conduct special inspections of any Project Works being operated by the Authority and
special audits of the Authority’s books and records to ascertain the extent of any OM&R
deficiencies to determine the remedial measures required for their correction and to assist the
Authority in solving specific problems. Except in an emergency, any special inspection or audit
shall be made only after written notice thereof has been delivered to the Authority by the
Contracting Officer.

(c) The Authority shall provide access to the Project Works, operate any
mechanical or electrical equipment, and be available to assist in the examination, inspection, or
audit.

(d) The Contracting Officer shall prepare reports based on the examinations,
inspections, and audits and furnish copies of such reports and any recommendations to the
Authority.

(e) The costs incurred by the United States in conducting OM&R
examinations, inspections, and audits and preparing associated reports and recommendations
related to high- and significant-hazard dams and associated facilities shall be nonreimbursable.
Associated facilities include carriage, distribution, and drainage systems; pumping and pumping
generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low-
hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;
regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries;
river channelization features; rural/municipal water systems; desalting and other water treatment
plants; maintenance buildings and service yards; facilities constructed under Federal loan
programs (until paid out); and recreation facilities (reserved works only); and any other facilities
as determined by the Contracting Officer.

(f) Expenses incurred by the Authority, as applicable, in participating in the
OM&R site examination will be borne by the Authority.

(g) Requests by the Authority for consultations, design services, or
modification reviews, and the completion of any OM&R activities identified in the formal
recommendations resulting from the examinations (unless otherwise noted) are to be funded as
project OM&R and are reimbursable by the Authority to the extent of current OM&R
allocations.

(h) Site visit special inspections that are beyond the regularly scheduled
OM&R examinations conducted to evaluate particular concerns or problems and provide
assistance relative to any corrective action (either as a follow up to an OM&R examination or
when requested by the Authority) shall be nonreimbursable.

(i) The Contracting Officer may provide the State of California an
opportunity to observe and participate in, at its own expense, the examinations and inspections.
The State of California may be provided copies of reports and any recommendations relating to
such examinations and inspections.

COST RECOVERY FOR AUTHORITY OM&R ACTIVITIES; TERMINATION OF WATER
DELIVERIES

12. As of the Effective Date, the Authority shall be responsible for directly funding
the OM&R of the Project Works transferred hereby. Except as otherwise provided herein, the
Parties acknowledge that the United States will no longer provide funding through the
appropriations process for such OM&R. The United States hereby delegates to the Authority all
required authority under statutes, contracts, regulations, and policies to collect for OM&R of the
Project Works. The procedures and authorities to be utilized by the Authority for such direct
funding are set forth in this Article 12.

(a) OM&R Budgets. Not later than ninety (90) days before the start of each
Year, the Authority shall submit to each Water Delivery Contractor, and all Parties Entitled to
Utilize or Receive Other Water, the proposed budget for the next Year for all activities of the
Authority to be carried out under this Agreement. The budget so developed shall include
amounts necessary to establish the reserve fund described in Article 14 and such other reserves as may be determined to be necessary by the Authority. The Authority shall afford each Water Delivery Contractor and all Parties Entitled to Utilize or Receive Other Water the opportunity to submit comments on such proposed budget by sixty (60) days before commencement of the Year. Except as otherwise provided in the Memorandum of Understanding described in Article 12(f), any dispute(s) regarding the proposed budget shall be resolved in the manner described in Article 10. The Authority shall submit the final budget for each Year to the Contracting Officer prior to the start of that Year. The Authority shall use reasonable efforts to perform its responsibilities under this Agreement in accordance with the applicable final budget.

(b) Cost Recovery Methodology. The Authority shall develop a methodology to recover all costs incurred by the Authority in carrying out its responsibilities under this Agreement, including without limitation all costs described in the budgets prepared pursuant to Article 12(a).

(1) The Authority's cost recovery methodology shall (i) provide for the equitable allocation of the costs to be recovered among Water Delivery Contractors with an obligation to pay for water delivered or conveyed through the Project Works and all Parties Entitled to Utilize or Receive Other Water with an obligation to pay therefor, including without limitation the Contracting Officer; (ii) provide for the equitable allocation of the costs to be paid to the Authority pursuant to the Memorandum of Understanding described in Article 12(f); and (iii) clearly set forth the manner in which all such costs shall be collected by the Authority, including deadlines for payments and/or deposits required of Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water under the methodology.
(2) Such methodology shall recover costs in lieu of the conveyance OM&R cost component, the conveyance pumping OM&R cost component and the San Luis Drain OM&R cost component heretofore calculated by the United States pursuant to its ratesetting policies for the Project. In addition to OM&R costs for directly funding the OM&R of the Project Works, such methodology shall recover (i) power costs for conveyance pumping incurred by the United States for the production or transmission of such power; and (ii) amounts due from the United States to the State of California, Department of Water Resources (hereinafter referred to as “DWR”), for the Federal share of facilities designated “joint use facilities” and “Federal-only facilities” pursuant to that certain agreement dated December 30, 1961, and Supplement No. 1 to said Agreement, dated May 26, 1971, between the United States and the State of California relating to the San Luis Unit (Contract No. 14-06-200-9755), as amended, that are payable by the Water Delivery Contractors, Parties Entitled to Utilize or Receive Other Water, and contractors in the Friant Division pursuant to the Memorandum of Understanding described in Article 12(f), in connection with the delivery or conveyance of water through the Project Works.

(3) The Authority’s cost recovery methodology and any subsequent amendments thereto shall be approved by the Authority and provided to all parties with payment obligations under this Article 12 by December 1 of each year, or not less than sixty (60) days prior to the effective date of any amendment thereof. Except as otherwise specified in the Memorandum of Understanding described in Article 12(f), any dispute(s) regarding the Authority’s cost recovery methodology shall be resolved in the manner described in Article 10. The Contracting Officer has approved the Authority’s initial cost recovery methodology. All
proposed amendments shall be submitted to the Contracting Officer for review and comment concurrent with the dissemination to all parties with payment obligations noted above.

(c) Deficiencies in Cost Recovery. The Authority is not obligated to provide funding from non-Federal sources for the cost of delivering water to Water Delivery Contractors or Parties Entitled to Utilize or Receive Other Water who do not pay the Authority in full for the OM&R of the Project Works.

(1) In the event any Water Delivery Contract or obligation to deliver Other Water provides for or results in the payment of less than all of the costs to be recovered by the Authority in accordance with Article 12(b) (a “deficiency”), whether resulting from the inadequacy of contract provisions between the Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water and the United States to cover the Authority's OM&R costs, delinquency in payment of amounts due as described in Article 12(d), or otherwise, the United States shall pay to the Authority the amount of any such deficiency.

(2) Except as otherwise provided under this Article 12(c), payment for such deficiencies shall be made through a separate service contract or such other appropriate legal instrument as may be entered into by the Parties from time to time, by the terms of which the United States agrees to pay or provide funding to the Authority for water delivery services provided under this Agreement to the United States on behalf of the parties incurring the deficiencies. The solicitation and award of any service contract shall be made pursuant to the applicable Federal acquisitions laws, regulations, and policies governing such contracts, including the Federal Acquisition Regulations (FAR), and the Department of the Interior and Bureau of Reclamation Acquisition Regulations. Payments made by the United States to the Authority for such deficiencies shall become the financial obligation of the deficient Water
Delivery Contractor or Party Entitled to Utilize or Receive Other Water to the Contracting Officer.

(3) If payments for deficiencies as provided in this Article 12(c) are not timely made by the United States in accordance with said service contract or other appropriate legal instrument, the Authority may exercise its rights under Article 12(d).

(d) Termination of Water Deliveries. Subject to subparagraphs (1) - (3) of this Article 12(d), in the event any amount due to or to be collected by the Authority from a Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water pursuant to Article 12 is not paid when due (a “delinquency”), the Authority is authorized by the United States to discontinue delivery and conveyance of water to or for such Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water until such time as the delinquency is cured.

(1) The Authority shall give the Contracting Officer and the delinquent party written notice of the delinquency and of the date deliveries will be terminated if the delinquency is not cured. The Contracting Officer and the Authority shall agree in writing on the appropriate timing and length of such notice period.

(2) In the event, and only in the event, the Contracting Officer directs the Authority in writing to deliver or convey water to or for a delinquent party, the United States shall be liable to the Authority for the costs to be recovered from such party under Article 12(c) of this Agreement, and the Authority shall have no obligation to collect any amounts associated with such water from the delinquent parties.

(3) For purposes of this Article 12(d), in the event the Friant Water Authority is unable to collect and remit to the Authority amounts to be paid by the Friant Division Contractors pursuant to the Memorandum of Understanding described in Article 12(f),
following the notice described in Article 12(d)(l), the Contracting Officer shall be deemed to have directed the Authority to deliver or convey Settlement Water despite a delinquency, and the United States shall be liable to the Authority for the costs to be recovered on account of such Settlement Water under this Agreement. The United States shall pay the costs associated with any such water on the same terms and conditions as would otherwise apply to the applicable Water Delivery Contractor or other party. Such costs shall be reimbursed to the Authority as set forth in Article 12(c).

(e) Interest. In the event any amounts due to the Authority from the United States under this Agreement are not paid when due, in addition to exercising the rights afforded the Authority under Article 12(c) and Article 12(d), the Authority will receive interest on the delinquent amounts pursuant to the Prompt Payment Act, as amended (31 USC 3901, et seq.); Provided, That the Authority shall have previously submitted appropriate invoices to the United States in accordance with 48 CFR Section 32.907-1.

(f) Recovery of Certain Costs and Memorandum of Understanding. The Parties acknowledge that the OM&R of certain Project facilities benefiting parties in the Friant Division will be performed by the Authority pursuant to this Agreement. In connection therewith, the Authority has entered into that certain “Memorandum of Understanding Between the Friant Water Users Authority and the San Luis & Delta-Mendota Water Authority Relating to Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water Delivered Through Certain Central Valley Project Facilities,” effective March 1, 1998, and amended February 25, 2003. The Parties acknowledge that effective June 30, 2004, the Friant Water Users Authority assigned all right, title, and interest in and to said Memorandum of Understanding to the Friant Water Authority, a joint powers authority, duly organized, existing,
and acting pursuant to the laws of the State of California. Pursuant to such Memorandum of
Understanding and said assignment, certain OM&R costs described therein will be payable by
contractors in the Friant Division of the Project and collected by the Friant Water Authority and
paid to the Authority in accordance with the terms of such Memorandum of Understanding as it
may be amended by the parties thereto. The United States acknowledges and agrees that it is not
a party to such Memorandum of Understanding. While this Agreement is in effect, the Authority
shall comply with the terms of such Memorandum of Understanding, as it may be amended by
the parties thereto.

(g) Direct Charges Replace U.S. Rate Components. After the effective date of
this Agreement, the United States shall not charge water rate components for conveyance
OM&R, conveyance pumping OM&R, or San Luis Drain OM&R to a Water Delivery
Contractor or Party Entitled to Utilize or Receive Other Water, except to the extent (i) financial
obligations otherwise properly included in such components have been incurred by the United
States prior to the date of this Agreement and have not been included as an expense therein under
the ratesetting policies for the Project; or (ii) the United States has paid or provided funding to
the Authority for delivering water to a Water Delivery Contractor or Party Entitled to Utilize or
Receive Other Water to cover a deficiency in payment.

(1) To the extent the Authority’s cost recovery methodology includes
recovery of power costs for conveyance pumping that are incurred by the United States for the
production or transmission of such power, the Authority shall remit such funds to the
Contracting Officer within thirty (30) days after receipt of the Contracting Officer's billing
therefor.
The Authority’s recovery of costs for conveyance and conveyance pumping due to DWR, shall be remitted to the Contracting Officer within thirty (30) days after receipt of the Contracting Officer's billing therefor; Provided, That this Article 12(g)(2) shall continue in effect only until execution and implementation of an agreement between the Contracting Officer, the Authority, and DWR providing for the direct payment by the Authority to DWR of such obligations, whereupon, the funds collected for payment to DWR shall be directly remitted by the Authority pursuant to the terms of such agreement.

All costs recovered pursuant to the Authority’s cost allocation methodology and not required to be remitted to the Contracting Officer pursuant to this Article 12(g) shall be immediately available for funding the costs of the Authority pursuant to this Article 12.

(h) Deposits of Amounts Collected. Amounts collected by the Authority pursuant to this Article 12 shall be placed on deposit or otherwise invested in accordance with the Authority's investment policy and in conformance with State law to be expended solely for purposes of this Agreement. All interest accruing on said account shall be property of the Authority, and not of the United States, and shall be applied against OM&R costs.

(i) The Contracting Officer agrees that material changes in Project operations affecting the quantity of water to be delivered or in Project finances may affect the ability of the Authority to carry out its obligations under this Agreement. Under such circumstances, the Parties will meet and confer as to emergency measures available to reduce the economic hardship to the Authority, the Water Delivery Contractors, and/or Parties Entitled to Utilize or Receive Other Water.
WATER ACCOUNTING

13. (a) The Contracting Officer’s water accounting system shall be the data utilized in maintaining water delivery records and in allocating costs for all Water Delivery Contractors and all Parties Entitled to Utilize or Receive Other Water. The water accounting system shall fully and accurately document the allocation and deliveries of water through the Project Works and account for financial transactions affecting the Water Delivery Contractors, the Friant Division Contractors required to make payments via the Friant Water Authority to the Authority pursuant to the Memorandum of Understanding described in Article 12(f), and all Parties Entitled to Utilize or Receive Other Water with an obligation to pay therefor.

(b) The Contracting Officer shall direct the Water Delivery Contractors and other Parties Entitled to Utilize or Receive Other Water to provide the Authority and the Contracting Officer with water delivery and payment information for all water delivered to said Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water pursuant to this Agreement. All water accounting records created or maintained by the Authority under this Agreement shall be subject to Article 15 and shall be accessible by the Contracting Officer.

(c) In order to further their mutual goals and objectives, the Contracting Officer and the Authority shall communicate, coordinate, and cooperate with each other, in order to improve the OM&R of the Project, including the financing thereof. The communication, coordination, and cooperation shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters, including but not limited to, budget and water accounting issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Agreement. Each party shall retain exclusive decision making authority for all actions, opinions, and determinations to be made by the respective party.
(d) The Contracting Officer acknowledges that some or all of the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water may appoint the Authority as agent for such parties or may otherwise designate, in writing, the Authority to act as an intermediary with the Contracting Officer concerning the water accounting or financial information. Upon notice, in writing, of such relationship, the Contracting Officer agrees to recognize the Authority in such capacity.

**EMERGENCY RESERVE FUND**

14. (a) Upon transfer of the OM&R of the Project Works under this Agreement, the Authority shall accumulate and maintain a minimum reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Authority shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

A minimum reserve fund account balance will be maintained to finance (1) OM&R costs; (2) costs associated with addressing conditions which threaten or cause interruption of water service; (3) unforeseen or extraordinary OM&R costs; and (4) costs associated with addressing conditions which threaten the safety or integrity of the Project Works.

(b) The Authority shall accumulate the reserve fund with annual deposits or investments over a maximum of ten (10) years and is to be held in a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government, in the California Local Agency Investment Fund, or, if approved by the Contracting Officer, in any fiduciary account in a manner provided by the laws of the State of California: *Provided, That* money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of fifteen percent (15%) of the average annual actual OM&R costs incurred by the Authority for the Project Works during the three most recent Years is accumulated (excluding any OM&R costs pertaining to Capital Improvements). Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the preview balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(c) Upon mutual written agreement between the Authority and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to
account for risk and uncertainty stemming from the size and complexity of the Project; the size of the annual OM&R budget; additions to deletions from, or changes in Project Works; and OM&R costs not contemplated when this Agreement was executed.

(d) The Authority may make expenditures from the reserve fund only for OM&R costs incurred during periods of special stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary operation and maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the Authority shall restore that balance within five (5) years of withdrawal by the accumulation of annual deposits which will be over and above the normal annual contribution to the reserve fund.

(e) During any period in which any of the Project Works are operated and maintained by the United States, the Authority agrees the reserve fund shall be available for like use by the United States.

(f) On or before March 1, of each year, the Authority shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

BOOKS, RECORDS, AND REPORTS

15. (a) The Authority shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Agreement, including the Authority’s financial transactions; water supply data; OM&R logs; Project Works Lands and rights-of-way use agreements; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal law and regulations, each Party to this Agreement shall have the right during officer hours to examine and make copies of the other Party’s books and records relating to matters covered by this Agreement.

All records and books maintained pursuant to this Agreement shall be available to, and subject at all reasonable times to inspection, examination, copying or audit by authorized representatives of affected Water Delivery Contractors, Parties Entitled to Utilize or Receive Other Water, and the Contracting Officer. Each month the Authority shall collect and certify all delivery and measurement records and report any abnormal findings to the Contracting Officer.

(b) The Authority shall maintain and verify records of actual expenditures in accordance with an accounting system prescribed by the California State Controller in
compliance with California Government Code Section 53891. The Contracting Officer and the
Authority shall preserve and make available their respective financial and accounting records and
books relating to this Agreement until the later of either (1) the final disposition of any litigation
or settlement of claims arising out of performance under this Agreement, or (2) the expiration of
dfive (5) years after the activities giving rise to the creation of such records and books. By
August 31, following the completion of each Year, the Authority shall provide the Contracting
Officer with a copy of its audited financial statements as of the end of the preceding Year.
(c) Until termination of this Agreement, the Authority shall retain the
originals of all significant OM&R records pertinent to the Project Works and/or water
operations, including modifications to Project Works; as-built drawings; maintenance and repair
logs; equipment tests, equipment operations logs; emergency response plans; spill prevention
control and countermeasure plans; written inquiries received by the Authority pursuant to the
Federal Freedom of Information Act or analogous State law; Congressional or State Legislative
requests; or public or private claims or potential claims against the United States and/or the
Authority relative to the Project Works.
(d) The Contracting Officer shall make available to the Authority those
operation, maintenance, financial and administration records relating to the Project Works in his
possession as of the Effective Date and any revisions or modifications to those records
subsequent to such execution.

NOTIFICATION OF THIRD PARTIES

16. (a) The Contracting Officer shall instruct all Water Delivery Contractors and
all Parties Entitled to Utilize or Receive Other Water that, effective March 1, 1998, the Authority
became the Operating Non-Federal Entity with respect to the Project Works. The Contracting
Officer shall inform all parties to be so notified of the Authority’s rights, authorities, and
obligations under this Agreement and any other agreements relevant to the Authority's status as
the Operating Non-Federal Entity and shall cooperate with the Authority in ensuring that all such
parties timely and properly make all required payments to the Authority. Without limiting the
foregoing, the Contracting Officer shall direct all such parties to simultaneously provide the
Authority with copies of all water delivery schedules provided to the Contracting Officer. The
Contracting Officer shall also inform all parties to be notified pursuant to this Article 16(a) that,
after the Effective Date of this Agreement, the United States shall not charge the conveyance
OM&R cost component, the conveyance pumping OM&R cost component or the drainage
OM&R cost component heretofore calculated by the United States pursuant to its ratesetting
policies for the Project to Water Delivery Contractors, or Parties Entitled to Utilize or Receive
Other Water, except to the extent financial obligations otherwise properly included in such
components have been incurred by the United States prior to the Effective Date of this
Agreement and have not been included as an expense therein under the ratesetting policies for
the Project.

(b) In accordance with the original agreement 8-07-20-X0354, the Secretary
included in all agreements providing for the delivery or conveyance of water through the Project
Works which were entered into, renewed, or amended after May 29, 1998, a provision requiring
that, while that agreement remained in effect, the Authority shall be the Operating Non-Federal
Entity with respect to the Project Works. All such new, renewed, or amended agreements shall
include provisions recognizing the Authority’s status as the Operating Non-Federal Entity, and
shall require that the non-Federal parties to such agreements timely and properly make all
required payments to the Authority. Such new, renewed, or amended agreements shall also
include provisions requiring the non-Federal parties to such agreements to simultaneously
provide the Authority with copies of all water delivery schedules and water delivery and payment information provided to the Contracting Officer. The Contracting Officer shall also include in all such new, renewed, or amended agreements a provision confirming that, after May 28, 1998, the United States shall not charge the conveyance OM&R cost component, the conveyance pumping OM&R cost component, or the San Luis Drain OM&R cost component heretofore calculated by the United States pursuant to its ratesetting policies for the Project to Water Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, except to the extent financial obligations otherwise properly included in such components have been incurred by the United States prior to the effective date of this Agreement and have not been included as an expense therein under the ratesetting policies for the Project.

**OPINIONS AND DETERMINATIONS**

17. (a) Where the terms of this Agreement provide for actions to be based upon the opinion or determination of either party, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious or unreasonable opinions or determinations. The Parties, notwithstanding any other provisions of this Agreement, expressly reserve the right to relief from and appropriate adjustment for any such arbitrary, capricious or unreasonable opinion or determination. Each opinion or determination by either Party shall be provided in a timely manner.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Agreement that are consistent with the expressed and implied provisions of this Agreement, the laws of the United States and the State of California, and rules and regulations applicable to the Contracting Officer. Such determinations shall be made in consultation with the Authority to the extent reasonably practicable.
CHARGES FOR DELINQUENT PAYMENTS

18. (a) The Authority shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, the Authority shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes sixty (60) days delinquent, the Authority shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent ninety (90) days or more, the Authority shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of six (6) percent per year. The Authority shall also pay any fees incurred for debt collection services associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied first, to the penalty, secondly to the administrative charges, third to the accrued interest, and finally to the overdue payment.

CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

19. (a) The Authority shall not allow contamination or pollution of Federal Project lands, Project waters, or Project works of the United States or administered by the United States and for which the Authority has the responsibility for care, operation, and maintenance by its employees or agents under this Agreement. The Authority shall also take reasonable precautions to prevent such contamination or pollution by third parties.

(b) The Authority shall comply with all applicable Federal, State, and local laws and regulations and Reclamation policies and instructions existing, or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, released, or disposed of on or in Federal Project lands, Project waters, or Project works.

(c) “Hazardous material” means (1) any substance falling within the definition of “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal law.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal Project lands, Project water, or Project Works, the Authority shall immediately undertake all measures necessary to protect public health and the environment,
including measures necessary to contain or abate any such contamination or pollution, and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting shall be within a reasonable time period but shall not exceed twenty-four (24) hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

(e) If violation of the provisions of this Article occurs and the Authority does not take immediate corrective action, as determined by the Contracting Officer, the Authority may be subject to remedies imposed by the Contracting Officer, which may include termination of this Agreement in accordance with Article 2(b).

(f) The Authority shall be liable for any response action or corrective measure necessary to protect public health and the environment or to restore Federal Project lands, Project waters, or Project Works that are adversely affected as a result of such violation, and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State, local or Tribal laws and regulations concerning hazardous material. At the discretion of the Contracting Officer, the United States may also terminate this Agreement in accordance with Article 2(b) as a result of such violation.

(g) The Authority shall defend, indemnify, protect and save the United States harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to Authority’s violation of this Article.

(h) Reclamation agrees to provide information necessary for the Authority, using reasonable diligence, to comply with the provisions of this Article.

ASSIGNMENT LIMITED: SUCCESSORS AND ASSIGNS OBLIGATED

20. The provisions of this Agreement shall apply to and bind the successors and assigns of the respective Parties, but no assignment or transfer of this Agreement or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

22. No member of or delegate to Congress, Resident Commissioner or official of the Authority shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
CLEAN AIR AND WATER

23. (a) The Authority agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in those sections, and all applicable regulations and guidelines issued thereunder.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Agreement was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the Agreement work is being performed.

(4) To insert the substance of the provisions of this Article into any nonexempt subcontract, including this subparagraph (a)(4).

(b) The following definitions apply for purposes of this Article:


(3) The term “clean air standards” refers to all enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. § 7412(d)).

(4) The term “clean water standards” refers to all enforceable limitations, controls, conditions, prohibitions, standards, and other requirements which are promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Clean Water Act (33 U.S.C. § 1317).

(5) The term “comply” refers to compliance with clean air or water standards. It also refers to compliance with a schedule or plan ordered or approved by a court of
competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control
agency in accordance with the requirements of the Clean Air Act or Clean Water Act and
regulations issued pursuant thereto.

(6) The term “facility” means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or supervised by a contractor or subcontractor to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS


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

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

(d) Complaints of discrimination against the Authority shall be investigated by the Contracting Officer’s Office of Civil Rights.
25. During the performance of this Agreement, the Authority agrees as follows:

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

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

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

(d) The Authority will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers’ representative of the Authority’s commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(f) The Authority will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
(g) In the event of the Authority’s noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended, in whole or in part and the Authority may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

NOTICES

26. (a) Any notice, demand, or request authorized or required by this Agreement shall be deemed to have been given, on behalf of the Authority, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Executive Director of the San Luis & Delta-Mendota Water Authority, PO Box 2157, Los Banos, CA 93635. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

(b) This Article 26 shall not preclude the effective service of such notice by other means.

MODIFICATIONS

27. Each Party reserves the right to propose modifications to this Agreement at any time while it is in effect. If either Party proposes any such modifications, the Parties shall promptly attempt to negotiate in good faith an amendatory Agreement to accommodate the proposed modifications.
USE OF SAN LUIS DRAIN

28. (a) The rights, obligations and liabilities of the Authority for OM&R of the San Luis Drain facilities pursuant to this Agreement are intended to replace and supersede the rights, obligations and liabilities of the Authority under that certain Cooperative Agreement No. 3-FC-20-10820 or then current agreement and are applicable to baseline OM&R activities as set forth in the Cooperative Agreement, including those activities delineated in Exhibit D.

(b) The rights, obligations and liabilities of the Parties relating to use of the San Luis Drain are outlined in the applicable agreement between the Parties for use of the San Luis Drain or then current agreement or contracting mechanism mutually agreed upon (hereinafter referred to as the Use Agreement) in effect, including without limitation the rights, obligations and liabilities of the Authority for OM&R activities pursuant to the Use Agreement, and are not replaced or superseded by the terms of this Agreement and with respect to the matters covered thereby. The terms of the Use Agreement shall control over the terms of this Agreement.

(c) The Parties acknowledge that there may be present in the San Luis Drain water, soil and/or sediments which may meet the definition of Hazardous Material under this Agreement. So long as the terms of the Use Agreement, or any extensions, renewals, or successor agreements thereto remain in effect, OM&R of the San Luis Drain by the Authority in accordance with the terms of such agreement and the terms of the then current Finding of No Significant Impact for the Use Agreement, or any documents prepared to comply with the National Environmental Policy Act for any extension, renewal or successor agreement thereof, shall not constitute a violation of Article 19 of this Agreement, nor trigger the reporting requirements of Article 19.
The Parties acknowledge that there may be present at Kesterson Reservoir during the course of this Agreement water, soil and/or sediments which may meet the definition of Hazardous Material under this Agreement; with regard to such water, soil and/or sediments, OM&R activities undertaken by the Authority pursuant to this Agreement in accordance with the PWS, Exhibit E, as updated and provided by the Contracting Officer, shall not constitute a violation of Article 19 of this Agreement, nor trigger the reporting requirements contained in Article 19.

CHANGES IN CONTRACTOR’S ORGANIZATION

While this Agreement is in effect, no change may be made in the Authority’s organization, by inclusion or exclusion of lands or by any other changes, which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Agreement including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer’s written consent.

PROTECTION OF WATER AND AIR QUALITY

The Authority, without expense to the United States, will perform the OM&R of the Project Works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

The United States will perform the OM&R of reserved works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water.

The Authority will comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Authority; and will be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal facilities or Project Water provided by the Authority within its Project Water service area.

This Article will not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.
31. When acquiring land or an interest in land and relocating persons or personal property in connection with the construction, operation, and maintenance of Project Facilities, the Authority shall comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et seq.) and Department of Transportation regulations at 49 C.F.R. part 24.

PEST MANAGEMENT

32. (a) The Authority is responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Agreement.

(b) The Authority is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project works for which and to the extent that the Authority has operation and maintenance responsibility. The Authority is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles, watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out of any area on Federal project land where work is performed.

(c) Where decontamination of the Authority’s vehicles, watercraft, or equipment is required prior to entering Federal project land or waters, the decontamination shall be performed by the Authority at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the completion of work, the Authority will perform any required decontamination within the work area before moving the vehicles, watercraft, and equipment from Federal Project lands and waters.

(d) Programs for the control of undesirable plants and animals on Federal Project lands, and in Federal Project waters and Federal Project works for which the Authority has operation and maintenance responsibility will incorporate Integrated Pest Management (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Authority will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part 517 Integrated Pest Management Policy and Part 609 Weed Control Program, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.
MEDIUM FOR TRANSMITTING PAYMENTS

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

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

SUSTAINABLE OPERATION AND MAINTENANCE

34. The Authority shall comply with Section Two (2) of Executive Order 13834 “Regarding Efficient Federal Operations”. Implementation of this Executive Order as it applies to this Agreement is provided in Exhibit F to this Agreement.

COOPERATION/MUTUAL AID

35. (a) In situations which the Contracting Officer and the Authority determine to be emergencies or other extraordinary circumstances affecting the Project, including without limitation, the Project Works, either the Contracting Officer or the Authority may request the other to furnish personnel, materials, tools, equipment, or other resources. The Party so requested shall immediately cooperate with the other and render such assistance as the Party so requested determines to be available. Unless otherwise agreed, the Party making the request, within sixty (60) days of receipt of properly itemized bills from the other Party, shall reimburse the Party rendering such assistance for all costs properly and reasonably incurred by it in such performance. Such costs shall be determined on the basis of current charges or rates charged by the Party rendering the assistance.

(b) In instances in which the total costs of responding to emergencies or other extraordinary circumstances, whether due to a single event or condition or to multiple events or
conditions, exceed or substantially deplete the Authority’s minimum reserve fund established 
pursuant to Article 14(b), the Contracting Officer agrees to cooperate with the Authority (1) to 
promptly identify sources of funding, including but not limited to, sources available from or to 
the United States; (2) to allocate responsibility for paying the costs of responding to such 
emergencies or other extraordinary circumstances, including but not limited to by determining 
Capital Improvements under Article 5(a); and (3) to develop a timetable for repayment of such 
costs that are provided by the United States and are allocated to the Authority.

AGREEMENT DRAFTING CONSIDERATIONS

36. This Agreement has been negotiated and reviewed by the Parties hereto, each of 
whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 36 of 
this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one Party 
shall be considered to have drafted the stated Articles.
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By: ________________________________
Regional Director, Mid-Pacific Region
Bureau of Reclamation

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY
(SEAL)

By: ________________________________
Chairman, Board of Directors

Attest:

______________________________
Secretary