

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

**AGREEMENT BETWEEN**  
**THE UNITED STATES AND**  
**THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**  
**FOR THE MANAGEMENT OF THE EXPANDED SAN LUIS RESERVOIR**  
**AND COST SHARE OF CHARGES**  
**ASSOCIATED WITH RAISING OF THE B.F. SISK DAM**  
**AND INCREASED STORAGE CAPACITY**  
**OF THE FEDERALLY ADMINISTERED SAN LUIS RESERVOIR**

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OF THE FEDERALLY ADMINISTERED SAN LUIS RESERVOIR**

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

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

16 **EXPLANATORY RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 [15<sup>th</sup>] WHEREAS, consistent with WIIN Act §4007(e), Reclamation, representing the  
81 United States, and the Authority, through the B.F. Sisk Dam Raise and Reservoir Expansion  
82 Project Activity Agreement, as may be amended or supplemented, attached as Exhibit F,  
83 representing Participating Agencies who will collectively share in the costs and benefits of the  
84 Expansion Project, desire to use the Expansion Project in such a manner as may be mutually  
85 agreeable to the Parties hereto; and

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

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

99 **DEFINITIONS**

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

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

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

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

113 (d) “Central Valley Project” or “CVP” shall mean the Central Valley Project  
114 owned by the United States and managed by the Department of the Interior, Bureau of  
115 Reclamation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 **TERM OF AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

237 (c) As an alternative to termination of this Agreement, Reclamation and a  
238 successor-in-interest to the Authority, including but not limited to Participating Agencies, may  
239 mutually agree to negotiate a new agreement for the management of the expanded San Luis  
240 Reservoir and cost share of charges associated with the raising of the B.F. Sisk Dam and  
241 increased storage capacity of the federally administered San Luis Reservoir. The Parties intend  
242 that such new agreement(s) would recognize the final storage benefits documented in exhibits to  
243 this Agreement.

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

251 will be incorporated into this Agreement. In addition to Exhibits E and F to this agreement are  
252 hereby incorporated into this Agreement.

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

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

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

266 **COST SHARE**

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

270 (a) Reclamation has the authority to share up to 50% of the costs of the  
271 Expansion Project; however, Reclamation and the Authority have agreed to an initial 70%

272 Authority-Managed Share of Expanded Reservoir and a 30% Federal Share of Expanded  
273 Reservoir.

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

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

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

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

292 (3) Environmental Mitigation and Compliance Costs: Either Party may  
293 fund environmental mitigation and compliance activities associated with this Agreement. These

294 activities may include, but are not limited to, contracts for technical assistance in environmental  
295 mitigation, funding of environmental mitigation commitments, and any actions to ensure  
296 consistency with the California Environmental Quality Act (CEQA) or Federal National  
297 Environmental Policy Act (NEPA) laws and regulations.

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

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

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

316 contracts: project management, construction management, accounting and administrative  
317 management, legal support and review, travel, general meetings related to the Expansion Project,  
318 contract/agreement technical meetings and negotiations, and other supportive services and  
319 activities necessary for the construction and operation of the Expansion Project prior to the  
320 determination of Substantial Completion.

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

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

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

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

338 needed, will be an exhibit to this Agreement. Any funds contributed to Reclamation for the  
339 Expansion Project will be considered part of the cost of this Expansion Project and shared in  
340 accordance with subarticle 3(a)(1) of this Agreement.

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

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

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

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

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**MANAGEMENT OF EXPANDED RESERVOIR**

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

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

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

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

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

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

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

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

402 (3) Acquired Water

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

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

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

418 (iv) Reclamation will not use Acquired Water for any purpose  
419 unless and until the Parties first mutually agree in writing to water or monetary compensation, or  
420 a combination thereof, prior to its use.<sup>1</sup> Reclamation's action to compensate the Authority, as  
421 mutually agreed, is final and conclusive.

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<sup>1</sup> Subject to Article 11, monetary compensation will be of either the total acquisition cost of the water when it was acquired by the contractor or the current year market rate (replacement cost), whichever is greater.

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

427 (4) CVP Water

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

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

442 (a) Following the filling of the Federal Share of  
443 Historic Reservoir, Reclamation will make a determination whether Article 3(f) water is

444 available to all south-of-Delta CVP water service/repayment contractors with available storage  
445 or conveyance capacity to take Article 3(f) water pursuant to their respective water  
446 service/repayment contracts.

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

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

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

456 (3) Water made available under this subarticle  
457 4(e)(4)(ii) and stored in the Authority-Managed Share of Expanded Reservoir can be scheduled  
458 for delivery at a later date in coordination with the Water Coordinator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

540 (3) Provide for a dispute resolution process.

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

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

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

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

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

564                                   **COORDINATION AND COOPERATION**

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

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

574

**EXISTING CONTRACTS**

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

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

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

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

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

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then the respective water service/repayment contract takes precedence.

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**DISPUTE RESOLUTION**

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

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

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

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

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

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

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

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

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

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Authority or the United States may have.

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

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

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

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

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

605 **OPINIONS AND DETERMINATIONS**

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

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

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

625 (d) The Parties recognize certain third-party benefits and obligations as  
626 provided for in Article 4(e)(1), 4(e)(2), 4(e)(3)(iii), 4(e)(3)(iv), 4(e)(3)(v), 4(e)(4)(i), and  
627 4(e)(4)(ii), coordinated through the Authority consistent with Exhibit F.

628 **NOTICES**

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

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

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

641

**OFFICIALS NOT TO BENEFIT**

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

645

**ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED**

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

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

651

**BOOKS, RECORDS, AND REPORTS**

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

662

**COMPLIANCE WITH LAWS**

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

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

672 (c) In protecting the interests of the United States, Reclamation’s contracts  
673 and its contracting process must comply with all applicable Federal, state, tribal, and local laws.

674 These laws may include environmental, civil rights, and cultural resources protection laws,  
675 among others, as well as laws that may be later enacted. Reclamation's water-related contracts  
676 will be drafted in a manner that allows Reclamation to take actions necessary to comply with all  
677 applicable laws.

678 **EQUAL EMPLOYMENT OPPORTUNITY**

679 16. The following language is required by Executive Order No. 11246 of September  
680 24, 1965, in all government contracts unless and until it is superseded or amended.

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

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

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

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

706 (d) The Authority will send to each labor union or representative of workers  
707 with which he has a collective bargaining agreement or other contract or understanding, a notice,  
708 to be provided by the agency Contracting Officer, advising the labor union or workers'  
709 representative of the Authority's commitments under section 202 of Executive Order No. 11246

710 of September 24, 1965, and shall post copies of the notice in conspicuous places available to  
711 employees and applicants for employment.

712 (e) The Authority will comply with all provisions of Executive Order No.  
713 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
714 Labor.

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

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

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

737

### **COMPLIANCE WITH CIVIL RIGHTS**

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

745 (b) These statutes prohibit any person in the United States from being  
746 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
747 discrimination under any program or activity receiving financial assistance from the Bureau of  
748 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this

749 Agreement, the Authority agrees to immediately take any measures necessary to implement this  
750 obligation, including permitting officials of the United States to inspect premises, programs, and  
751 documents.

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

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

762 **CERTIFICATION OF NONSEGREGATED FACILITIES**

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

783 **NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR**  
784 **CERTIFICATIONS OF NONSEGREGATED FACILITIES**

785 A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract  
786 exceeding \$10,000 which is not exempt from the provisions of the Equal Employment  
787 Opportunity clause. The certification may be submitted either for each subcontract or for all

788 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for  
789 making false statements in offers is prescribed in 18 U.S.C. § 1001.

790 **MEDIUM FOR TRANSMITTING PAYMENTS**

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

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

799 **AGREEMENT DRAFTING CONSIDERATIONS**

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

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

807 THE UNITED STATES OF AMERICA

808 By: \_\_\_\_\_  
809 Regional Director  
810 Interior Region 10: California-Great Basin  
811 Bureau of Reclamation

812 San Luis & Delta-Mendota Water Authority  
813 (SEAL)

814 By: \_\_\_\_\_  
815 Chair, Board of Directors

816 Attest:

817 \_\_\_\_\_  
818 Secretary