

CONTRIBUTED FUNDS AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY  
FOR THE FUNDING OF ACTIVITES RELATED TO  
THE B.F. SISK DAM RAISE

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation (Reclamation), pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, particularly the Contributed Funds Act of May 4, 1921(43 Stat. 1404, 43 U.S.C. § 395); and the Safety of Dams Act of 1978 (SOD Act), dated November 2, 1978, (P.L. 95-578), as amended; and the San Luis & Delta-Mendota Water Authority (Contractor), a joint powers authority duly organized, existing, and acting pursuant to the laws of the State of California;

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project (CVP), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the United States and the Contractor executed Contract No. 8-07-20-X0354, dated March 1, 1998, as amended and supplemented which

transferred the responsibility for operation, maintenance and replacement of a certain portion of CVP, Delta Division facilities, to the Contractor; and

[3<sup>rd</sup>] WHEREAS, the United States has determined that there exists a safety concern on B.F. Sisk Dam (Dam), and has begun the process of correcting those deficiencies pursuant to the SOD Act, herein called Safety of Dam Work (SOD Work); and

[4<sup>th</sup>] WHEREAS, the Contractor, in accordance with the SOD Act, desires to pursue the development of additional project benefits (Dam Raise) as part of and in conjunction with the necessary SOD Work anticipated on the Dam; and

[5<sup>th</sup>] WHEREAS, it has been determined by the United States that the Dam Raise is both necessary and in the interest of the United States; and

[6<sup>th</sup>] WHEREAS, the Contractor agrees, at its own expense, to pay all costs allocated to the Dam Raise.

NOW THEREFORE, the parties agree as follows:

1. PURPOSE

A. The purpose of this Agreement is to define the process by which the parties will work together to complete tasks and to provide a means by which the United States can accept funds contributed by the Contractor and expend them to complete activities related to the Dam Raise, which are necessary and in the interest of the United States and the Contractor. Specific tasks under this agreement include but are not limited to developing, negotiating, and administering contracts, performing and/or reviewing associated documents, studies, or analyses prepared by the Contractor, and any activities related to environmental compliance and the development of a feasibility study associated with the Dam Raise.

## 2. AREAS OF MUTUAL RESPONSIBILITY

A. Reclamation and the Contractor will cooperate to conduct the work described within this Agreement.

B. Reclamation and the Contractor will coordinate completion of the activities in this Agreement with their respective consultants and contractors.

C. Reclamation and the Contractor will furnish goods and personnel as necessary to complete the requirements of this Agreement.

## 3. CONTRACTOR RESPONSIBILITY

The specific activities that the Contractor will be responsible for will be determined upon mutual agreement between the United States and the Contractor. The specific activities will be described in the Project Management Plan (PMP). Once these activities are determined and described in the PMP, a detailed summary of those activities will be attached to this Agreement as Exhibit A.

## 4. RECLAMATION RESPONSIBILITY

The specific activities that the United States will be responsible for will be determined upon mutual agreement between the United States and the Contractor. The specific activities will be described in the PMP. Once these activities are determined and described in the PMP, a detailed summary of those activities will be attached to this Agreement as Exhibit B.

## 5. COSTS

A. Reclamation represents to the Contractor that Reclamation has no authorization or funds appropriated for paying the costs of developing contracts, for preparing necessary studies, analyses, investigations, designs, reports, and construction activities, or for performing the necessary compliance with NEPA and other environmental laws for the Dam Raise.

B. The total estimated cost of the work under this agreement is \$XXX,XXX, which cost is solely the responsibility of the Contractor.

C. Reclamation's costs for which the Contractor will be fully responsible will include, but not be limited to, the following:

(1) Reclamation's salary and overhead costs accrued for the above activities.

(2) Travel by Reclamation staff, including per diem and transportation costs, as required for the above activities.

(3) Photocopying and mailing by Reclamation of documents related to the above activities.

(4) Coordination, review, public meetings, oversight, construction and other reasonable costs related to the above activities in this Agreement.

D. Reclamation will provide monthly projections and summaries of expenses anticipated and incurred by Reclamation in connection with the activities described in this Agreement related to the feasibility of the Dam Raise.

E. Reclamation and the Contractor agree that payment of Reclamation costs or completion of any or all aspects of this Agreement does not guarantee that requests made by the Contractor will be approved by Reclamation. Further, this Agreement does not in any way or manner commit the United States to contract for or approve the feasibility report for the Dam Raise.

## 6. PAYMENT

A. In order to avoid violation of the Anti-Deficiency Act (31 U.S.C. § 1341), Reclamation shall create, within thirty (30) days after the execution of this Agreement, a unique cost account and will assign an accountant to monitor the account balance to track the costs of

services provided under the terms of this Agreement which are associated with the development of the feasibility study for the Dam Raise and to assure that the advance is not overspent.

B. Such account will be required to hold a minimum balance of no less than \$30,000. Reclamation, upon coordination with the Contractor, may reassess the minimum amount required at intervals no less than six months.

C. Reclamation shall submit to the Contractor an invoice to replenish the expended funds as needed to maintain the minimum balance.

D. Upon execution of this Agreement, Reclamation will issue an initial invoice to the Contractor in the amount of \$XX,XXX. The Contractor will submit payment which will be held by Reclamation in the account described in this Article 6 to be applied toward Reclamation's costs incurred for activities associated with the feasibility report. The payment will reference Contract No. 19-WC-20-5524 and will be transmitted according to the instructions on the invoice.

E. To facilitate accurate accounting of funds contributed under this Agreement, Reclamation and the Contractor will hold a quarterly meeting for reconciliation of all invoices, payments, reimbursements, and funds received. At such time as Reclamation estimates that the contributed funds balance is sufficient to pay all remaining costs, taking into account any cost overruns or savings, Reclamation and the Contractor shall reconcile all cost payments, and shall assign payments and/or credits such that all contributions are consistent with the payment obligations in this Agreement.

F. Following completion of the Project or termination under Article 7A of this Agreement, Reclamation will refund within 60 days to the Contractor any unexpended advanced

funds remaining in the account described in Article 6A above which are in excess of the total actual costs associated with the Dam Raise activities described in this Agreement.

#### 7. GENERAL PROVISIONS

This Agreement shall become effective on the date of the last signature hereto. This Agreement may be modified, amended or terminated upon mutual agreement of the parties hereto, but in any event will terminate one year following the completion of the feasibility report. Any party may terminate its obligations and duties under this Agreement at any time upon thirty (30) days written notice to the other party, or a shorter period of time upon mutual agreement; *Provided that*, such determination is the result the Contractor being unable to secure sufficient funding to cover the cost of the Dam Raise or feasibility report, or the Dam Raise is no longer in the interests of either the United States or the Contractor. All duties and obligations of the parties under this Agreement will cease at that time except as the Agreement provisions relate to accounting and reimbursing the parties' expenses.

#### 8. NOTICES

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Regional Director, \_\_\_\_\_ Region, Bureau of Reclamation, \_\_\_\_\_, \_\_\_\_\_, and on behalf of the United States, when mailed, postage prepaid, or delivered to the \_\_\_\_\_ of the Contractor, \_\_\_\_\_, \_\_\_\_\_. 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.

#### 9. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

#### 10. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

#### 11. CHANGES IN CONTRACTOR'S ORGANIZATION

While this contract is in effect, no change may be made in the Contractor'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 contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

#### 12. ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

#### 13. BOOKS, RECORDS, AND REPORTS

The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including the Contractor's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; 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 laws and regulations, each party to this contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

#### 14. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

(a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), [Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.)] [Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.)], and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(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 contract, the

Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor shall be investigated by the Contracting Officer's Office of Civil Rights.

#### 15. MEDIUM FOR TRANSMITTING PAYMENTS

(a) All payments from the Contractor to the United States under this contract 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 contract, the Contractor shall furnish the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

#### 16. CONTRACT DRAFTING CONSIDERATIONS

This Contract has been negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 7 of this Contract 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 Contract the day and year first above written.

Approved:

UNITED STATES OF AMERICA

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Office of the Regional Solicitor

Ernest A. Conant  
Regional Director

ATTEST:

SAN LUIS & DELTA-MENDOTA  
WATER AUTHORITY

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Federico Barajas  
Executive Director

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