



MEMORANDUM

TO: SLDMWA Board of Directors, Alternates

FROM: Frances Mizuno, Assistant Executive Director

DATE: December 12, 2019

RE: Execution of 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

BACKGROUND

The Authority entered into an 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 Plant and O'Neill Pumping/Generating Plant, San Luis Drain and Associated Works, Contract No. 8-07-20-X0354 (Transfer Agreement) for a term of twenty-five (25) years, effective March 1, 1998, and as amended in 2003 and 2004.

The current agreement term ends on March 1, 2023. However, the Water Authority has a need to complete a renewed Transfer Agreement by December, 2019.

The Authority is seeking funding for infrastructure improvement related to the Jones Pumping Plant (JPP) Unit Motor Rehabilitation Project (Project). There are a total of six units that require rehabilitation for a total Project cost of \$36.1M. The U.S. Bureau of Reclamation (Reclamation) funded rehabilitation of the first unit and the Water Authority is funding the second unit. The Water Authority is seeking funding for the remaining four units and submitted a Letter of Interest (LOI) for the Water Infrastructure and Innovation Act (WIFIA) loan administered by the U.S. Environmental Protection Agency (EPA) in July and has subsequently been accepted to submit an application for a WIFIA loan. This WIFIA financing is expected to be secured by a pledge of net revenue collection from Operations & Maintenance (O&M) rates provided under the Transfer Agreement. Therefore, to secure the WIFIA loan and any other financing necessary for future Extraordinary O&M (EO&M) Projects, the Water Authority must have a Transfer Agreement in place for the term of the loan. The WIFIA loan term can be up to 35 years.

The Authority submitted a request to Reclamation for an early renewal of the Transfer Agreement on June 25, 2019 and began negotiations on a new agreement in November.

ISSUE FOR DECISION

Whether the Board of Directors should authorize the Executive Director to complete the negotiations and the Board Chair to execute the final Transfer Agreement in substantially the form attached and presented to the Board.

OPTIONS AND RECOMMENDATION

We recommend the Board authorize the Executive Director to complete any final negotiations and the Board Chair to execute the final Transfer Agreement.

ANALYSIS

The terms and conditions in the renewed Transfer Agreement remain substantially the same as the current agreement and involve the continued operation and maintenance of existing facilities within established parameters, without an expansion or substantial modification of use. All proposed changes are administrative in nature. The areas to highlight are:

1. The term of the agreement will be thirty-five (35) years effective on January 1, 2020.
2. Several provisions, including the liability/indemnity provision in Article 3, were changed to reflect the standard article language in various Reclamation Directive and Standards. Where helpful, we have negotiated clarifying additions to the standard language.
3. Clarified OM&R definition to include financing, which will help ensure financing costs and interest are OM&R expenses that can be included in O&M revenue collection.
4. Ability for the Authority to obtain delegated authority to issue Temporary Access Permits for use of right-of-way. This allows for more expedient processing of requests for temporary use of right-of-way.
5. Included a definition of Substantial Change which requires Reclamation approval. Current agreement requires the Authority to pay for Reclamation's cost related to review and approval of Substantial Change work. New agreement will be subject to future expected Substantial Change Directives & Standards to allow for Reclamation's costs related to review and approval to be non-reimbursable costs.
6. Removed the requirement to prepare budgets for two years.
7. Changed annual audited financial statements to be completed by August 31 instead of June 30.

IMPLICATIONS

Memo to SLDMWA Board of Directors

December 12, 2019

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A renewed Transfer Agreement must be executed prior to the Authority submitting the WIFIA application. The Transfer Agreement is the mechanism that provides the security for revenue collection from Operations & Maintenance (O&M) rates for repayment for the term of the loan. The term of the loan is expected to be thirty (30) years.

BUDGET

The budget is not impacted by execution of the Transfer Agreement.

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

RESOLUTION NO. 2019-___

RESOLUTION AUTHORIZING THE FILING OF NOTICES OF STATUTORY EXEMPTION AND CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR AND AUTHORIZING EXECUTION OF 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

WHEREAS, between 1992 and 1998, the San Luis & Delta-Mendota Water Authority (“Water Authority”) operated and maintained the Delta-Mendota Canal and certain other facilities pursuant to a Cooperative Agreement between the United States and the San Luis & Delta-Mendota Water Authority (Agreement No. 3-FC-20-10820).

WHEREAS, on March 1, 1998, the San Luis & Delta-Mendota Water Authority (“Water Authority”) entered into 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 (“OM&R Transfer Agreement”) with the United States of America, which transferred to the Authority OM&R activities for certain CVP facilities, along with certain financial and administrative activities related to those facilities.

WHEREAS, subsequently, the Water Authority and the United States executed two amendments to the OM&R Transfer Agreement, effective February 18, 2003, and June 30, 2004, respectively.

WHEREAS, the current OM&R Transfer Agreement term ends on March 1, 2023, but the Water Authority desires to renew the OM&R Transfer Agreement by the end of December 2019, to allow the Water Authority to secure long-term financing for scheduled and anticipated OM&R activities.

WHEREAS, the Water Authority submitted a request to the United States Bureau of Reclamation for an early renewal of the OM&R Transfer Agreement on June 25, 2019, and conducted negotiations on a renewed OM&R Transfer Agreement in November and December, 2019.

WHEREAS, a draft renewed OM&R Transfer Agreement, a copy of which has been presented to the Board of Directors of the Water Authority (the “Board”) and is on file with the Secretary hereof, provides for continued OM&R of certain CVP facilities within established

parameters, in the same scope and nature of the ongoing CVP project and its existing facilities, for a term of thirty-five (35) years, with opportunity for future renewal.

WHEREAS, the Board is willing to authorize execution of the renewed OM&R Transfer Agreement, subject to such revisions, additions, and deletions as may be negotiated by the Executive Director prior to the execution of the renewed OM&R Transfer Agreement, said execution to provide conclusive evidence of such approval.

WHEREAS, the terms and conditions in the renewed OM&R Transfer Agreement remain substantially the same as the current OM&R Transfer Agreement and involve the continued operation and maintenance of existing facilities within established parameters, without an expansion or substantial modification of use, and therefore the renewed OM&R Transfer Agreement is exempt from further compliance with the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. Renewal of the OM&R Transfer Agreement will not result in any of the circumstances or effects specified in Title 14 of the California Code of Regulations, section 15300.2.

Section 3. Execution of the renewed OM&R Transfer Agreement is statutorily exempt from compliance with the California Environmental Quality Act as provided in the California Public Resources Code and implemented through Title 14 of the California Code of Regulations, Sections 15260 through 15285, with particular reference to Section 15261, because it is merely a continuation of a project approved, funded and fully operated prior to November 23, 1970, and no modification or alteration in the Central Valley Project or the amount of water delivered is proposed.

Section 4. Execution of the renewed OM&R Transfer Agreement is exempt from the California Environmental Quality Act based on the Board's record of proceedings showing that renewal of the OM&R Transfer Agreement continues existing OM&R activities and involves no increase in existing service, no new construction, expansion, or any modification to the existing distribution system; nor any change in the source of water to be delivered, or the uses to which such supplies will be put.

Section 5. Execution of the renewed OM&R Transfer Agreement is categorically exempt from compliance with the California Environmental Quality Act as provided in Title 14 of the California Code of Regulations, Section 15300 through 15333, with particular reference to Section 15301, because it merely provides for continued operation, maintenance, and replacement of existing facilities.

Section 6. The Water Authority shall prepare and file a Notice of Exemption with the Clerks of Alameda, San Joaquin, Stanislaus, Merced, and Fresno Counties and the Office of

Planning and Research (State Clearinghouse) as provided for in Title 14 of the California Code of Regulations, Section 15062, in substantially the forms attached hereto as Exhibit A.

Section 7. The renewed OM&R Transfer Agreement in substantially the form presented to the Board and on file with the Secretary is hereby approved. The Board hereby authorizes the Executive Director to complete negotiations on the renewed OM&R Transfer Agreement, for an on behalf of the Water Authority.

Section 8. The Board further authorizes Chairman Cannon Michael to execute the renewed OM&R Transfer Agreement in substantially the form attached hereto, once finally negotiated, for and on behalf of the Water Authority, subject to such additions, deletions, and revisions as the Executive Director shall negotiate and recommend prior to execution of the renewed OM&R Transfer Agreement.

Section 9. The Executive Director is further authorized and directed to take all such additional actions, including without limitation, the execution of documents, as may be required or reasonably necessary to carry out the intention of this Resolution and the terms of the renewed OM&R Transfer Agreement approved hereby.

PASSED, APPROVED AND ADOPTED this 12th day of December, 2019, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

Cannon Michael, Chairman
San Luis & Delta-Mendota Water Authority

Attest:

Federico Barajas, Secretary

I hereby certify that the foregoing Resolution No. 2019- _ was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 12th day of December, 2019.

Federico Barajas, Secretary

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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Exhibit A: List of Project Works

Exhibit B: Settlement Contractors

Exhibit C: List of Obligations to Convey and Distribute Water In and From the Project Works

Exhibit D: Baseline OM&R Activities for the San Luis Drain

Exhibit E: Performance Work Statement – Kesterson Reservoir

Exhibit F: Sustainable Operation and Maintenance

Exhibit G: Inspection Reports

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DRAFT

Contract No. 8-07-20-X0354-X

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

1 AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SAN LUIS &
2 DELTA-MENDOTA WATER AUTHORITY TO TRANSFER THE OPERATION,
3 MAINTENANCE AND REPLACEMENT AND CERTAIN FINANCIAL AND
4 ADMINISTRATIVE ACTIVITIES RELATED TO THE SAN LUIS AND DELTA-MENDOTA
5 CANALS, C.W. "BILL" JONES PUMPING PLANT, DELTA-MENDOTA CANAL/
6 CALIFORNIA AQUEDUCT INTERTIE PUMPING PLANT, O'NEILL
7 PUMPING/GENERATING PLANT, SAN LUIS DRAIN AND ASSOCIATED WORKS

8 THIS AGREEMENT, effective the _____ day of _____, _____, ("Effective Date")
9 in pursuance generally of the Act of Congress of June 17, 1902 (32 Stat.388), and the acts
10 amendatory thereof or supplementary thereto, including Section 5 of the Act of August 13, 1914
11 (38 Stat. 687), all collectively hereinafter referred to as the Federal Reclamation laws, between
12 the UNITED STATES OF AMERICA, hereinafter referred to as the United States, and the SAN
13 LUIS & DELTA-MENDOTA WATER AUTHORITY, hereinafter referred to as the Authority, a
14 public agency of the State of California, duly organized, existing, and acting pursuant to the laws
15 of the State of California, the United States and the Authority are referred to collectively as the
16 "Parties," and individually as a "Party."

17 WITNESSETH, That:

18 RECITALS

19 a. The United States Bureau of Reclamation has constructed the Delta Division and
20 San Luis Unit of the Central Valley Project (Project) for storage, diversion, carriage and

21 distribution of water for agricultural, flood control, municipal, industrial, domestic and other
22 beneficial uses and purposes; and

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

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

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

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

39 f. For the recovery and collection of OM&R Costs associated with the delivery of
40 Settlement Water, the Authority entered that certain Memorandum of Understanding Relating to
41 Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water
42 Delivered Through Certain Central Valley Project Facilities (MOU) effective March 1, 1998,
43 amended September 1, 2002, with the Friant Water Users Authority, which was then assigned to

44 the Friant Water Authority effective June 30, 2004, with said change incorporated into the
45 Transfer Agreement through a second amendment effective June 30, 2004; and

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

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

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

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

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

64 l. The National Environmental Policy Act compliance requirement for execution of
65 this Agreement has been met by the Categorical Exclusion dated November 12, 2019; and

66 In consideration of the mutual and dependent covenants herein contained, the
67 Parties mutually agree as follows:

68 DEFINITIONS

69 1. When used in this Agreement, the term:

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

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

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

84 (d) “Operation, Maintenance and Replacement” or “OM&R” shall mean the
85 complete operation and maintenance of the Project Works, including performing, funding, and
86 financing such repairs and replacements as are normally considered part of annual operation and
87 maintenance functions and not considered Capital Improvement costs of the Project in
88 accordance with the *Blue Book* entitled Federal Replacements, Units, Service Lives, Factors, as it
89 exists on the date of this Agreement or in accordance with Federal law or any other regulations,

90 policies, guidelines or instructions adopted thereunder. OM&R shall include the performance,
91 funding, and financing of emergency or unusual operation and maintenance or extraordinary
92 operation and maintenance costs, unusual or extraordinary repair or replacement costs, and
93 betterment costs, but only to the extent the costs thereof are not considered Capital Improvement
94 costs of the Project in accordance with the *Blue Book* referenced above as it exists on the date of
95 this Agreement or in accordance with Federal law or any other regulations, policies, guidelines
96 or instructions adopted thereunder. Notwithstanding the foregoing, OM&R shall also include
97 Capital Improvements, as that term is defined in Article 1(a) which the Authority chooses to
98 accomplish and finance pursuant to Article 5(b).

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

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

113 environmental obligations of the Secretary, the Party Entitled to Utilize or Receive Other Water
114 (and therefore required to pay the Authority the amounts described in Article 12 in connection
115 with the delivery thereof) shall be the Contracting Officer.

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

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

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

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

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

134 (l) "Settlement Water" shall mean the water the Settlement Contractors are
135 entitled to receive from the Project Works without charge.

136 (m) “Substantial Change” shall mean a modification in, or addition to, Project
137 Works which involves changes in the original design intent, function, and/or operational
138 parameters of the facility, or changes in benefits of the Project Works, including non-routine
139 maintenance activities that involve construction or reconstruction of a portion of the facility.

140 (n) “Water Delivery Contract” shall mean (1) any contract entered into by the
141 Secretary under the provisions of Sections 9(c), 9(d) or 9(e) of the Reclamation Project Act of
142 1939 [43 USC 485h (c), (d) and (e)] or Section 3404 of the Central Valley Project Improvement
143 Act (106 Stat. 4706) pursuant to which Project Water is to be supplied from or through the
144 Project Works and (2) any exchange contract, water rights settlement contract or similar
145 agreement pursuant to the terms of which water is to be supplied by the Secretary from or using
146 the Project Works.

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

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

151 TERM OF AGREEMENT

152 2. (a) This Agreement shall be effective as of the Effective Date and shall
153 remain in effect for thirty-five (35) years thereafter; *Provided, That* this Agreement is not
154 terminated at an earlier date pursuant to Article 2(b) below. Subject to modification acceptable
155 to the Contracting Officer and the Authority, the Authority shall have the option to renew this
156 Agreement for successive periods not to exceed thirty-five (35) years each by providing written
157 notice of such to the Contracting Officer not more than one (1) year, but not less than six (6)
158 months, prior to the end of the then-current term, unless by mutual agreement to renew sooner.

159 (b) The Contracting Officer may terminate this Agreement at any time before
160 the expiration of its term whenever the Contracting Officer determines that the Authority is in
161 substantial violation of the Agreement as provided in this Article 2(b); *Provided, That* prior to
162 the effective date of any such termination, the Contracting Officer shall first notify the Authority
163 in writing of, the specific purported deficiencies of the Authority in carrying out the terms and
164 conditions of this Agreement. It is the intent of the Parties that disputes be resolved pursuant to
165 this Article 2(b) as expeditiously as is reasonably possible without the necessity of other relief at
166 law or in equity. If after the designated representative of the Authority has met with the
167 Contracting Officer or his or her designated representative and attempt in good faith and with the
168 use of best efforts to resolve any dispute arising from the purported deficiency an agreement is
169 not reached, the Contracting Officer may issue a notice of proposed termination, which includes
170 the specific deficiencies of the Authority's performance under this Agreement. The Authority
171 shall have at least ninety (90) days from receipt of the written notice of proposed termination to
172 correct all deficiencies referred to in said written notice; *Provided, That* in the event of a
173 condition which threatens the safety or integrity of the Project Works, the Contracting Officer
174 may specify a shorter correction period which the Contracting Officer determines to be
175 appropriate under the circumstances. In the event the Authority does not correct all deficiencies
176 referred to in said written notice within the applicable period, the Contracting Officer may
177 thereafter terminate this Agreement upon thirty (30) days prior written notice to the Authority.
178 Any termination pursuant to this Article shall be subject to the rights and obligations of the
179 Parties as more specifically set forth in this Agreement.

180 (c) The Authority may at any time, upon giving twelve (12) months written
181 notice, terminate this Agreement; *Provided, That* such termination shall not relieve the Authority

182 of any of its duties, liabilities or obligations accruing from the effective date of this Agreement to
183 the effective date of such termination, except insofar as the Authority lacks funding to perform
184 such obligations due to a failure by the United States to meet any of its obligations under this
185 Agreement.

186 (d) Upon any termination of this Agreement, the United States will take over
187 from the Authority the care, OM&R of the Project Works and the Authority shall transfer to the
188 United States (1) title to all tools, vehicles, supplies, and equipment transferred under Article
189 3(b) of the original agreement 8-07-20-X0354 (to the extent still on hand) or purchased by the
190 Authority for the purposes of this Agreement, and (2) any funds in its possession which were
191 collected for, or allocated to, the OM&R of the Project Works for the then-current Year which
192 are in excess of the obligations of the Authority for the OM&R of the Project Works. All other
193 funds and reserves in the Authority's possession, including without limitation all other funds
194 collected for, or allocated to, the OM&R of the Project Works and the reserve funds established
195 under Article 14 shall be retained or distributed by the Authority in accordance with the direction
196 of the Authority's board of directors.

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

201 OPERATION AND MAINTENANCE OF PROJECT WORKS

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

205 (b) The Authority, without expense to the United States, will care for, OM&R
206 the Project Works in full compliance with the terms of this Agreement and in such a manner that

207 the Project Works remain in good and efficient condition, subject to exercise of discretion to
208 fund and carry out Capital Improvements, as described below in Article 5(b).

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

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

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

229 (f) Omitted.

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

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

244 (i) Nothing in this Article will be deemed to waive the sovereign immunity of
245 the United States.

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TRANSFER INSPECTION

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

270 next ten (10) years and agree upon the mechanism for accomplishing and financing the Capital
271 Improvements.

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

282 PERFORMANCE WORK STATEMENT, EMERGENCY ACTION PLANS AND
283 NOTIFICATIONS

284 6. (a) The Authority shall maintain the Project Works in such a manner that the
285 Project Works shall remain in good and efficient condition for the storage, diversion and carriage
286 of water. The Authority shall perform the OM&R of the Project Works consistent with the
287 guidelines provided by existing Designer's Operating Criteria, standard operation procedures
288 (SOPs) and/or manufacturer's technical manuals for the Project Works, in accordance with such
289 sound engineering practices as have been or may be developed for the Project Works, and in
290 accordance with applicable Federal, State and local environmental laws. Deviations from or
291 changes to these standards shall be approved by the Contracting Officer.

292 (b) The Authority shall prepare such Emergency Action Plans (EAPs) for the
293 Project Works as are required by governmental agencies with jurisdiction over the Authority’s
294 operations. The Authority shall furnish copies of any such plans to the Contracting Officer.

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

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

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

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

307 ADMINISTRATION OF FEDERAL PROJECT LANDS

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

315 Where there are existing unauthorized encroachments as of the Effective Date on Project Works
316 Lands, the Authority will work with the Contracting Officer to resolve the encroachments to the
317 Contracting Officer’s satisfaction. For the purposes of this Agreement “encroachment” means

318 any unauthorized building, structure, or object of any kind or character placed, into, over, or
319 under any Project Works Lands.

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

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

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

340 (d) The United States retains responsibility for compliance with the National
341 Historic Preservation Act of 1966, and the Native American Graves Protection and Repatriation

342 Act of 1990. The Authority will notify the Contracting Officer and, only when on tribal land,
343 also notify the appropriate tribal official, immediately upon the discovery of any potential
344 historic properties or Native American human remains, funerary objects, sacred objects, or
345 objects of cultural patrimony.

346 OVERSIGHT AND PARTICIPATION

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

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

355 DELIVERY OF WATER BY THE AUTHORITY

356 9. (a) The Authority shall convey and distribute water in and from the Project
357 Works in accordance with the directives of the Contracting Officer so that the Contracting
358 Officer can satisfy all valid water delivery obligations of the United States from the Project
359 Works, including without limitation all water delivery obligations of the United States under
360 Water Delivery Contracts and for the delivery of Other Water. The Authority shall deliver water
361 to each Water Delivery Contractor or Party Entitled to Utilize or Receive Other Water entitled
362 thereto from the Project Works through turnouts or such temporary diversion facilities as are
363 specified in then-existing Water Delivery Contracts or other arrangements or agreements relating
364 to Other Water specifying such turnouts and delivery points, or as may be agreed to by such
365 Water Delivery Contractor(s) or Party Entitled to Utilize or Receive Other Water, the Authority,
366 and the Contracting Officer.

367 (b) A complete list of all valid obligations of the United States to convey and
368 distribute water in and from the Project Works is attached as Exhibit C and incorporated herein
369 by this reference. Exhibit C indicates whether each obligation is under a Water Delivery
370 Contract or is for the delivery of Other Water. The Contracting Officer shall modify Exhibit C
371 as such obligations change or as new obligations are added.

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

384 RESOLUTION OF DISPUTES

385 10. Should any dispute arise concerning delivery or conveyance of water by the
386 Authority through the Project Works between the Authority, any Water Delivery Contractor(s)
387 and/or any Party(ies) Entitled to Utilize or Receive Other Water from or through the Project
388 Works, which the Authority concludes cannot be resolved through negotiations with the other
389 party(ies) to the dispute, the Authority shall provide its position with respect to such dispute to
390 the other party(ies) thereto in writing. Within sixty (60) days after such notice is provided, the

391 dispute shall be referred to the Contracting Officer for resolution. The Contracting Officer's
392 resolution of the dispute shall be accepted by the Authority and other party(ies) thereto as final
393 and conclusive and the Authority and the other party(ies) shall promptly comply with said
394 decision and shall operate the Project Works in conformance with such decision until the same is
395 stayed, reversed or modified by a decision of a court of competent jurisdiction.

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

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

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

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

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

419 (e) The costs incurred by the United States in conducting OM&R
420 examinations, inspections, and audits and preparing associated reports and recommendations
421 related to high- and significant-hazard dams and associated facilities shall be nonreimbursable.
422 Associated facilities include carriage, distribution, and drainage systems; pumping and pumping
423 generating plants; powerplant structures; tunnels/pipelines; diversion and storage dams (low-
424 hazard); Type 2 bridges which are Reclamation-owned bridges not located on a public road;
425 regulating reservoirs (low-hazard); fish passage and protective facilities, including hatcheries;
426 river channelization features; rural/municipal water systems; desalting and other water treatment

427 plants; maintenance buildings and service yards; facilities constructed under Federal loan
428 programs (until paid out); and recreation facilities (reserved works only); and any other facilities
429 as determined by the Contracting Officer.

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

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

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

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

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

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

454 (a) OM&R Budgets. Not later than ninety (90) days before the start of each
455 Year, the Authority shall submit to each Water Delivery Contractor, and all Parties Entitled to
456 Utilize or Receive Other Water, the proposed budget for the next Year for all activities of the
457 Authority to be carried out under this Agreement. The budget so developed shall include

458 amounts necessary to establish the reserve fund described in Article 14 and such other reserves
459 as may be determined to be necessary by the Authority. The Authority shall afford each Water
460 Delivery Contractor and all Parties Entitled to Utilize or Receive Other Water the opportunity to
461 submit comments on such proposed budget by sixty (60) days before commencement of the
462 Year. Except as otherwise provided in the Memorandum of Understanding described in
463 Article 12(f), any dispute(s) regarding the proposed budget shall be resolved in the manner
464 described in Article 10. The Authority shall submit the final budget for each Year to the
465 Contracting Officer prior to the start of that Year. The Authority shall use reasonable efforts to
466 perform its responsibilities under this Agreement in accordance with the applicable final budget.

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

471 (1) The Authority's cost recovery methodology shall (i) provide for the
472 equitable allocation of the costs to be recovered among Water Delivery Contractors with an
473 obligation to pay for water delivered or conveyed through the Project Works and all Parties
474 Entitled to Utilize or Receive Other Water with an obligation to pay therefor, including without
475 limitation the Contracting Officer; (ii) provide for the equitable allocation of the costs to be paid
476 to the Authority pursuant to the Memorandum of Understanding described in Article 12(f); and
477 (iii) clearly set forth the manner in which all such costs shall be collected by the Authority,
478 including deadlines for payments and/or deposits required of Water Delivery Contractors and all
479 Parties Entitled to Utilize or Receive Other Water under the methodology.

480 (2) Such methodology shall recover costs in lieu of the conveyance
481 OM&R cost component, the conveyance pumping OM&R cost component and the San Luis
482 Drain OM&R cost component heretofore calculated by the United States pursuant to its
483 ratesetting policies for the Project. In addition to OM&R costs for directly funding the OM&R
484 of the Project Works, such methodology shall recover (i) power costs for conveyance pumping
485 incurred by the United States for the production or transmission of such power; and (ii) amounts
486 due from the United States to the State of California, Department of Water Resources
487 (hereinafter referred to as “DWR”), for the Federal share of facilities designated “joint use
488 facilities” and “Federal-only facilities” pursuant to that certain agreement dated December 30,
489 1961, and Supplement No. 1 to said Agreement, dated May 26, 1971, between the United States
490 and the State of California relating to the San Luis Unit (Contract No. 14-06-200-9755), as
491 amended, that are payable by the Water Delivery Contractors, Parties Entitled to Utilize or
492 Receive Other Water, and contractors in the Friant Division pursuant to the Memorandum of
493 Understanding described in Article 12(f), in connection with the delivery or conveyance of water
494 through the Project Works.

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

502 proposed amendments shall be submitted to the Contracting Officer for review and comment
503 concurrent with the dissemination to all parties with payment obligations noted above.

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

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

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

525 Delivery Contractor or Party Entitled to Utilize or Receive Other Water to the Contracting
526 Officer.

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

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

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

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

545 (3) For purposes of this Article 12(d), in the event the Friant Water
546 Authority is unable to collect and remit to the Authority amounts to be paid by the Friant
547 Division Contractors pursuant to the Memorandum of Understanding described in Article 12(f),

548 following the notice described in Article 12(d)(1), the Contracting Officer shall be deemed to
549 have directed the Authority to deliver or convey Settlement Water despite a delinquency, and the
550 United States shall be liable to the Authority for the costs to be recovered on account of such
551 Settlement Water under this Agreement. The United States shall pay the costs associated with
552 any such water on the same terms and conditions as would otherwise apply to the applicable
553 Water Delivery Contractor or other party. Such costs shall be reimbursed to the Authority as set
554 forth in Article 12(c).

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

561 (f) Recovery of Certain Costs and Memorandum of Understanding. The
562 Parties acknowledge that the OM&R of certain Project facilities benefiting parties in the Friant
563 Division will be performed by the Authority pursuant to this Agreement. In connection
564 therewith, the Authority has entered into that certain “Memorandum of Understanding Between
565 the Friant Water Users Authority and the San Luis & Delta-Mendota Water Authority Relating to
566 Allocation, Collection and Payment of Operation, Maintenance & Replacement Costs for Water
567 Delivered Through Certain Central Valley Project Facilities,” effective March 1, 1998, and
568 amended February 25, 2003. The Parties acknowledge that effective June 30, 2004, the Friant
569 Water Users Authority assigned all right, title, and interest in and to said Memorandum of
570 Understanding to the Friant Water Authority, a joint powers authority, duly organized, existing,

571 and acting pursuant to the laws of the State of California. Pursuant to such Memorandum of
572 Understanding and said assignment, certain OM&R costs described therein will be payable by
573 contractors in the Friant Division of the Project and collected by the Friant Water Authority and
574 paid to the Authority in accordance with the terms of such Memorandum of Understanding as it
575 may be amended by the parties thereto. The United States acknowledges and agrees that it is not
576 a party to such Memorandum of Understanding. While this Agreement is in effect, the Authority
577 shall comply with the terms of such Memorandum of Understanding, as it may be amended by
578 the parties thereto.

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

588 (1) To the extent the Authority's cost recovery methodology includes
589 recovery of power costs for conveyance pumping that are incurred by the United States for the
590 production or transmission of such power, the Authority shall remit such funds to the
591 Contracting Officer within thirty (30) days after receipt of the Contracting Officer's billing
592 therefor.

593 (2) The Authority’s recovery of costs for conveyance and conveyance
594 pumping due to DWR, shall be remitted to the Contracting Officer within thirty (30) days after
595 receipt of the Contracting Officer's billing therefor; *Provided, That* this Article 12(g)(2) shall
596 continue in effect only until execution and implementation of an agreement between the
597 Contracting Officer, the Authority, and DWR providing for the direct payment by the Authority
598 to DWR of such obligations, whereupon, the funds collected for payment to DWR shall be
599 directly remitted by the Authority pursuant to the terms of such agreement.

600 (3) All costs recovered pursuant to the Authority’s cost allocation
601 methodology and not required to be remitted to the Contracting Officer pursuant to this Article
602 12(g) shall be immediately available for funding the costs of the Authority pursuant to this
603 Article 12.

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

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

WATER ACCOUNTING

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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.

639 (d) The Contracting Officer acknowledges that some or all of the Water
640 Delivery Contractors and Parties Entitled to Utilize or Receive Other Water may appoint the
641 Authority as agent for such parties or may otherwise designate, in writing, the Authority to act as
642 an intermediary with the Contracting Officer concerning the water accounting or financial
643 information. Upon notice, in writing, of such relationship, the Contracting Officer agrees to
644 recognize the Authority in such capacity.

645 EMERGENCY RESERVE FUND

646 14. (a) Upon transfer of the OM&R of the Project Works under this Agreement,
647 the Authority shall accumulate and maintain a minimum reserve fund or demonstrate to the
648 satisfaction of the Contracting Officer that other funds are available for use as an emergency
649 reserve fund. The Authority shall establish and maintain that emergency reserve fund to meet
650 costs incurred during periods of special stress caused by damaging droughts, storms,
651 earthquakes, floods, or other emergencies threatening or causing interruption of water service.
652 A minimum reserve fund account balance will be maintained to finance (1) OM&R costs; (2)
653 costs associated with addressing conditions which threaten or cause interruption of water service;
654 (3) unforeseen or extraordinary OM&R costs; and (4) costs associated with addressing
655 conditions which threaten the safety or integrity of the Project Works.

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

671 (c) Upon mutual written agreement between the Authority and the
672 Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to

673 account for risk and uncertainty stemming from the size and complexity of the Project; the size
674 of the annual OM&R budget; additions to deletions from, or changes in Project Works; and
675 OM&R costs not contemplated when this Agreement was executed.

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

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

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

692 BOOKS, RECORDS, AND REPORTS

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

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

706 (b) The Authority shall maintain and verify records of actual expenditures in
707 accordance with an accounting system prescribed by the California State Controller in

708 compliance with California Government Code Section 53891. The Contracting Officer and the
709 Authority shall preserve and make available their respective financial and accounting records and
710 books relating to this Agreement until the later of either (1) the final disposition of any litigation
711 or settlement of claims arising out of performance under this Agreement, or (2) the expiration of
712 five (5) years after the activities giving rise to the creation of such records and books. By
713 August 31, following the completion of each Year, the Authority shall provide the Contracting
714 Officer with a copy of its audited financial statements as of the end of the preceding Year.

715 (c) Until termination of this Agreement, the Authority shall retain the
716 originals of all significant OM&R records pertinent to the Project Works and/or water
717 operations, including modifications to Project Works; as-built drawings; maintenance and repair
718 logs; equipment tests, equipment operations logs; emergency response plans; spill prevention
719 control and countermeasure plans; written inquiries received by the Authority pursuant to the
720 Federal Freedom of Information Act or analogous State law; Congressional or State Legislative
721 requests; or public or private claims or potential claims against the United States and/or the
722 Authority relative to the Project Works.

723 (d) The Contracting Officer shall make available to the Authority those
724 operation, maintenance, financial and administration records relating to the Project Works in his
725 possession as of the Effective Date and any revisions or modifications to those records
726 subsequent to such execution.

727 NOTIFICATION OF THIRD PARTIES

728 16. (a) The Contracting Officer shall instruct all Water Delivery Contractors and
729 all Parties Entitled to Utilize or Receive Other Water that, effective March 1, 1998, the Authority
730 became the Operating Non-Federal Entity with respect to the Project Works. The Contracting
731 Officer shall inform all parties to be so notified of the Authority's rights, authorities, and

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

746 (b) In accordance with the original agreement 8-07-20-X0354, the Secretary
747 included in all agreements providing for the delivery or conveyance of water through the Project
748 Works which were entered into, renewed, or amended after May 29, 1998, a provision requiring
749 that, while that agreement remained in effect, the Authority shall be the Operating Non-Federal
750 Entity with respect to the Project Works. All such new, renewed, or amended agreements shall
751 include provisions recognizing the Authority's status as the Operating Non-Federal Entity, and
752 shall require that the non-Federal parties to such agreements timely and properly make all
753 required payments to the Authority. Such new, renewed, or amended agreements shall also
754 include provisions requiring the non-Federal parties to such agreements to simultaneously

755 provide the Authority with copies of all water delivery schedules and water delivery and
756 payment information provided to the Contracting Officer. The Contracting Officer shall also
757 include in all such new, renewed, or amended agreements a provision confirming that, after
758 May 28, 1998, the United States shall not charge the conveyance OM&R cost component, the
759 conveyance pumping OM&R cost component, or the San Luis Drain OM&R cost component
760 heretofore calculated by the United States pursuant to its ratesetting policies for the Project to
761 Water Delivery Contractors, or Parties Entitled to Utilize or Receive Other Water, except to the
762 extent financial obligations otherwise properly included in such components have been incurred
763 by the United States prior to the effective date of this Agreement and have not been included as
764 an expense therein under the ratesetting policies for the Project.

765 OPINIONS AND DETERMINATIONS

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

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

778

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

796

CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

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

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

806 (c) “Hazardous material” means (1) any substance falling within the
807 definition of “hazardous substance,” “pollutant or contaminant,” or “hazardous waste” under the
808 Comprehensive Environmental Response, Compensation and Liability Act
809 (42 U.S.C. § 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act
810 (33 U.S.C. § 1321(a)) and the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution,
811 refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides,
812 and other solid waste, and (4) any other substance regulated as hazardous or toxic under Federal,
813 State, local or Tribal law.

814 (d) Upon discovery of any event which may or does result in contamination or
815 pollution of Federal Project lands, Project water, or Project Works, the Authority shall
816 immediately undertake all measures necessary to protect public health and the environment,

817 including measures necessary to contain or abate any such contamination or pollution, and shall
818 report such discovery with full details of the actions taken to the Contracting Officer. Reporting
819 shall be within a reasonable time period but shall not exceed twenty-four (24) hours from the
820 time of discovery if it is an emergency and the first working day following discovery in the event
821 of a non-emergency.

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

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

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

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

838 ASSIGNMENT LIMITED: SUCCESSORS AND ASSIGNS OBLIGATED

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

842 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

848 OFFICIALS NOT TO BENEFIT

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

852

CLEAN AIR AND WATER

853 23. (a) The Authority agrees as follows:

854 (1) To comply with all the requirements of section 114 of the Clean
855 Air Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act
856 (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as
857 other requirements specified in those sections, and all applicable regulations and guidelines
858 issued thereunder.

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

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

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

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

868 (1) The term “Clean Air Act” means the Act enacted by Pub. L. 88-
869 206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

870 (2) The term “Clean Water Act” means the Act enacted by Pub. L. 92-
871 500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

872 (3) The term “clean air standards” refers to all enforceable rules,
873 regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other
874 requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean
875 Air Act or Executive Order 11738, an applicable implementation plan as described in
876 section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or
877 plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or
878 (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act
879 (42 U.S.C. § 7412(d)).

880 (4) The term “clean water standards” refers to all enforceable
881 limitations, controls, conditions, prohibitions, standards, and other requirements which are
882 promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by
883 the Environmental Protection Agency or by a state under an approved program, as authorized by
884 section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure
885 compliance with pretreatment regulations as required by section 307 of the Clean Water Act
886 (33 U.S.C. § 1317).

887 (5) The term “comply” refers to compliance with clean air or water
888 standards. It also refers to compliance with a schedule or plan ordered or approved by a court of

889 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control
890 agency in accordance with the requirements of the Clean Air Act or Clean Water Act and
891 regulations issued pursuant thereto.

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

899 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

900 24. (a) The Authority shall comply with Title VI of the Civil Rights Act of 1964
901 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1975 (Pub. L. 93-112, Title V, as
902 amended; 29 U.S.C. §791, et. Seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
903 III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L.
904 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the
905 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
906 Interior and/or Bureau of Reclamation.

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

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

922 (d) Complaints of discrimination against the Authority shall be investigated
923 by the Contracting Officer’s Office of Civil Rights.

924

EQUAL OPPORTUNITY

925 25. During the performance of this Agreement, the Authority agrees as follows:

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

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

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

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

956 (e) The Authority will comply with all provisions of Executive Order No.
957 11246 of September 24, 1965, and of the rules regulations and relevant orders of the Secretary of
958 Labor.

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

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

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

981 NOTICES

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

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

991 MODIFICATIONS

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

USE OF SAN LUIS DRAIN

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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.

1019 (d) The Parties acknowledge that there may be present at Kesterson Reservoir
1020 during the course of this Agreement water, soil and/or sediments which may meet the definition
1021 of Hazardous Material under this Agreement; with regard to such water, soil and/or sediments,
1022 OM&R activities undertaken by the Authority pursuant to this Agreement in accordance with the
1023 PWS, Exhibit E, as updated and provided by the Contracting Officer, shall not constitute a
1024 violation of Article 19 of this Agreement, nor trigger the reporting requirements contained in
1025 Article 19.

1026 CHANGES IN CONTRACTOR’S ORGANIZATION

1027 29. While this Agreement is in effect, no change may be made in the Authority’s
1028 organization, by inclusion or exclusion of lands or by any other changes, which may affect the
1029 respective rights, obligations, privileges, and duties of either the United States or the Contractor
1030 under this Agreement including, but not limited to, dissolution, consolidation, or merger, except
1031 upon the Contracting Officer’s written consent.

1032 PROTECTION OF WATER AND AIR QUALITY

1033 30. (a) The Authority, without expense to the United States, will perform the
1034 OM&R of the Project Works in a manner that preserves the quality of the water at the highest
1035 feasible level as determined by the Contracting Officer.

1036 (b) The United States will perform the OM&R of reserved works in a manner
1037 that preserves the quality of the water at the highest feasible level as determined by the
1038 Contracting Officer. The United States does not warrant the quality of the water delivered to the
1039 Water Delivery Contractors and Parties Entitled to Utilize or Receive Other Water and is under
1040 no obligation to furnish or construct water treatment facilities to maintain or improve the quality
1041 of water delivered to the Water Delivery Contractors and Parties Entitled to Utilize or Receive
1042 Other Water.

1043 (c) The Authority will comply with all applicable water and air pollution laws
1044 and regulations of the United States and the State of California; and will obtain all required
1045 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
1046 delivery of water by the Authority; and will be responsible for compliance with all Federal,
1047 State, and local water quality standards applicable to surface and subsurface drainage and/or
1048 discharges generated through the use of Federal facilities or Project Water provided by the
1049 Authority within its Project Water service area.

1050 (d) This Article will not affect or alter any legal obligations of the Secretary to
1051 provide drainage or other discharge services.

1052

RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

1053 31. When acquiring land or an interest in land and relocating persons or personal
1054 property in connection with the construction, operation, and maintenance of Project Facilities,
1055 the Authority shall comply with the provisions of the Uniform Relocation Assistance and Real
1056 Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. § 4601, et
1057 seq.) and Department of Transportation regulations at 49 C.F.R. part 24.

1058

PEST MANAGEMENT

1059 32. (a) The Authority is responsible for complying with applicable Federal, State,
1060 and local laws, rules, and regulations related to pest management in performing its
1061 responsibilities under this Agreement.

1062 (b) The Authority is responsible for effectively avoiding the introduction and
1063 spread of, and for otherwise controlling, undesirable plants and animals, as defined by the
1064 Contracting Officer, on or in Federal Project lands, Federal Project waters, and Federal Project
1065 works for which and to the extent that the Authority has operation and maintenance
1066 responsibility. The Authority is responsible for exercising the level of precaution necessary in
1067 meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for
1068 reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of
1069 weeds, invasive species and other pests, and removing such materials before moving its vehicles,
1070 watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out
1071 of any area on Federal project land where work is performed.

1072 (c) Where decontamination of the Authority's vehicles, watercraft, or
1073 equipment is required prior to entering Federal project land or waters, the decontamination shall
1074 be performed by the Authority at the point of prior use, or at an approved offsite facility able to
1075 process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the
1076 completion of work, the Authority will perform any required decontamination within the work
1077 area before moving the vehicles, watercraft, and equipment from Federal Project lands and
1078 waters.

1079 (d) Programs for the control of undesirable plants and animals on Federal
1080 Project lands, and in Federal Project waters and Federal Project works for which the Authority
1081 has operation and maintenance responsibility will incorporate Integrated Pest Management
1082 (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible
1083 program to maintain pest populations within economically and environmentally tolerable levels.
1084 In implementing an IPM program, the Authority will adhere to applicable Federal and State laws
1085 and regulations and Department of the Interior and Bureau of Reclamation policies, directives,
1086 guidelines, and manuals, including but not limited to, the Department of the Interior Manual, Part
1087 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the Plant
1088 Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3,
1089 1999.

1090

MEDIUM FOR TRANSMITTING PAYMENTS

1091 33. (a) All payments from the Authority to the United States under this
1092 Agreement shall be by the medium requested by the United States on or before the date payment
1093 is due. The required method of payment may include checks, wire transfers, or other types of
1094 payment specified by the United States.

1095 (b) Upon execution of the Agreement, the Authority shall furnish the
1096 Contracting Officer with the Authority’s taxpayer’s identification number (TIN). The purpose
1097 for requiring the Authority’s TIN is for collecting and reporting any delinquent amounts arising
1098 out of the Authority’s relationship with the United States.

1099

SUSTAINABLE OPERATION AND MAINTENANCE

1100 34. The Authority shall comply with Section Two (2) of Executive Order 13834
1101 “*Regarding Efficient Federal Operations*”. Implementation of this Executive Order as it applies
1102 to this Agreement is provided in Exhibit F to this Agreement.

1103

COOPERATION/MUTUAL AID

1104 35. (a) In situations which the Contracting Officer and the Authority determine to
1105 be emergencies or other extraordinary circumstances affecting the Project, including without
1106 limitation, the Project Works, either the Contracting Officer or the Authority may request the
1107 other to furnish personnel, materials, tools, equipment, or other resources. The Party so
1108 requested shall immediately cooperate with the other and render such assistance as the Party so
1109 requested determines to be available. Unless otherwise agreed, the Party making the request,
1110 within sixty (60) days of receipt of properly itemized bills from the other Party, shall reimburse
1111 the Party rendering such assistance for all costs properly and reasonably incurred by it in such
1112 performance. Such costs shall be determined on the basis of current charges or rates charged by
1113 the Party rendering the assistance.

1114 (b) In instances in which the total costs of responding to emergencies or other
1115 extraordinary circumstances, whether due to a single event or condition or to multiple events or

1116 conditions, exceed or substantially deplete the Authority's minimum reserve fund established
1117 pursuant to Article 14(b), the Contracting Officer agrees to cooperate with the Authority (1) to
1118 promptly identify sources of funding, including but not limited to, sources available from or to
1119 the United States; (2) to allocate responsibility for paying the costs of responding to such
1120 emergencies or other extraordinary circumstances, including but not limited to by determining
1121 Capital Improvements under Article 5(a); and (3) to develop a timetable for repayment of such
1122 costs that are provided by the United States and are allocated to the Authority.

1123 AGREEMENT DRAFTING CONSIDERATIONS

1124 36. This Agreement has been negotiated and reviewed by the Parties hereto, each of
1125 whom is sophisticated in the matters to which this Agreement pertains. Articles 1 through 36 of
1126 this Agreement have been drafted, negotiated, and reviewed by the Parties, and no one Party
1127 shall be considered to have drafted the stated Articles.

1128

1129

IN WITNESS WHEREOF, the Parties hereto have executed

1130

this Agreement as of the day and year first above written.

1131

THE UNITED STATES OF AMERICA

1132

1133

By: _____

1134

Regional Director, Mid-Pacific Region

1135

Bureau of Reclamation

1136

1137

SAN LUIS & DELTA-MENDOTA

1138

WATER AUTHORITY

1139

(SEAL)

1140

1141

1142

By: _____

1143

Chairman, Board of Directors

1144

Attest:

1145

1146

1147

Secretary