



MEMORANDUM

TO: SLDMWA Finance & Administration Committee, Board of Directors, Alternates

FROM: Pablo Arroyave, Chief Operating Officer

DATE: September 13, 2021

RE: Recommendation to Authorize Execution of Delta-Mendota Canal Subsidence Correction Project Cooperative Agreement and Memorandum of Agreement with the U.S. Bureau of Reclamation

BACKGROUND

The Delta-Mendota Canal (DMC) has experienced, and is currently experiencing, a significant amount of ground subsidence that has impacted the structural integrity of the canal and has resulted in lost conveyance capacity. The San Luis & Delta-Mendota Water Authority (Water Authority) and the U.S. Bureau of Reclamation (USBR) have been working closely studying the deficiencies of the canal and associated facilities with the ultimate goal to restore the capacity of the DMC. Lidar, bathymetric, and benchmark surveys (2014, 2016, 2018, 2021) have been completed to quantify the subsidence effects and to build a HEC-RAS model. A DMC Subsidence Correction Project Value Planning study and Appraisal Level Cost Estimate have been completed thus far, and the Feasibility Level cost estimate is being prepared and is scheduled to be complete by October 1, 2021.

Reclamation received \$3 Million in WIIN Act Funding for the purpose of conducting Studies for the proposed Delta-Mendota Canal Subsidence Correction Project and has \$2.1 million remaining for a Cooperative Agreement with the Water Authority to fund preliminary studies for the Project. Preliminary studies include the following six (6) tasks:

1. Geotechnical Investigations
2. Cultural Resources Records Search
3. Feasibility Report
4. Environmental Compliance
5. USBR DEC Review
6. Cooperative Agreement Management

The substantially complete Cooperative Agreement has been drafted with a total cost of \$5,677,080. The Water Authority's 50/50 cost share portion is \$2,838,540. The term of the Cooperative Agreement is 5 years.

A substantially complete draft Memorandum of Agreement for Conducting Feasibility Level Activities and Preparation of a Feasibility Report for the Proposed Delta-Mendota Canal Subsidence Correction Project and a Memorandum of Agreement (MOA) for Sharing of Costs has been prepared to define the obligations and responsibilities of both the Water Authority and USBR as the objectives of the Cooperative Agreement are completed.

ISSUE FOR DECISION

Whether the Board of Directors should delegate authority to the Executive Director, Federico Barajas, to execute the MOA and delegate authority to the Chief Operating Officer, Pablo Arroyave, to execute the Delta-Mendota Canal Subsidence Correction Project Cooperative Agreement with the U.S. Bureau of Reclamation.

RECOMMENDATION

Staff recommends approval of the of the above-listed actions.

ANALYSIS

The DMC Subsidence Correction Project is a high priority project to the Water Authority, USBR, and to the those that receive water deliveries via the DMC. As per recent USBR guidance, a complete Feasibility Report that includes analysis of various repair alternatives, economic effects of the repair and costs and project budget along with the required environmental analyses needs to be completed prior to final design and construction. Tasks covered with this Cooperative Agreement will include all anticipated tasks/activities associated with developing the Feasibility Report and NEPA/CEQA requirements.

Authorizing execution of the MOA and the Cooperative Agreement are both administrative and organizational actions that will not result in a direct change in the environment or a reasonably foreseeable indirect change to the environment; they are government fiscal activities that do not involve commitment to any specific project and thus do not constitute projects under the California Environmental Quality Act (CEQA Guidelines Sections 15378(b)(4) and (b)(5); and both are also statutorily exempt from CEQA because they anticipate only feasibility and planning studies with no adverse relationship to environmental factors and no commitment to specific future actions.

BUDGET

An additional \$1,571,904 is anticipated to be requested as part of the FY23 Budget packet to fund the remaining SLDMWA cost share of the Cooperative Agreement.

ATTACHMENTS

1. Substantially Complete Cooperative Agreement
2. Substantially Complete Memorandum of Agreement
3. Cooperative Agreement Estimated Costs Break Down

Financial Assistance Agreement
between the
U.S. Bureau of Reclamation and the San Luis & Delta-Mendota Water Authority
Delta-Mendota Canal Subsidence Correction Project

COOPERATIVE AGREEMENT

1. Introduction.

This Financial Assistance Agreement (Agreement) is entered into between the United States of America, acting through the Department of Interior, Bureau of Reclamation (Reclamation) and the San Luis & Delta-Mendota Water Authority (Recipient), pursuant to the Water Infrastructure for Improvements to the Nation (WIIN) Act (Public Law 114-322, dated December 16, 2016), 130 Stat 1863, Section 4007-Storage. The following section (excerpts of relevant points from the WIIN Act) provided in full text, authorizes Reclamation to award this financial assistance agreement.

PUBLIC LAW 114-322 130 Stat 1863, December 16, 2016
Section 4007. Storage.

(a) DEFINITIONS. –In this subtitle:

- (1) FEDERALLY OWNED STORAGE PROJECT. –The term “federally owned storage project” means any project involving a surface water storage facility in a Reclamation State–
- (A) to which the United States holds title; and
 - (B) that was authorized to be constructed, operated, and maintained pursuant to the reclamation laws.

(b) FEDERALLY OWNED STORAGE PROJECTS. –

- (1) AGREEMENTS. –On the request of any State, any department, agency, or subdivision of a State, or any public agency organized pursuant to State law, the Secretary of the Interior may negotiate and enter into an agreement on behalf of the United States for the design, study, and construction or expansion of any federally owned storage project in accordance with this section.
- (2) FEDERAL COST SHARE. –Subject to the requirements of this subsection, the Secretary of the Interior may participate in a federally owned storage project in an amount equal to not more than 50 percent of the total cost of the federally owned storage project.

(c) STATE -LED STORAGE PROJECTS- Not applicable for this case

(d) AUTHORITY TO PROVIDE ASSISTANCE. –The Secretary of the Interior may provide financial assistance under this subtitle to carry out projects within any Reclamation State.

As seen above, the WIIN Act allows the Secretary to enter an agreement on behalf of the United States with any State, any department, agency, or subdivision of a State, or any

public agency organized pursuant to State law for the design, study, and construction or expansion of any federally owned project. The Recipient and Reclamation are jointly agreeing and partnering to develop a solution to the Delta-Mendota Canal (DMC) subsidence issue on a 50-50 cost share basis in accordance with the WIIN Act.

2. **Background:**

The DMC is a 116-mile long canal which conveys water by gravity from the Delta region near Tracy, California to the Mendota Pool near Mendota, California. This canal is one of the major components of the Delta Division of Reclamation's Central Valley Project (CVP) and is considered critical infrastructure. The DMC was designed by Reclamation in the late 1940's and early 1950's consistent with the then-current design standards and construction was completed in 1951. The DMC was originally constructed for storage, diversion, carriage and distribution of water for agricultural purposes. Since construction, the DMC has included the delivery of water for fish and wildlife, municipal, industrial, domestic, and other beneficial uses and purposes.

The DMC was originally designed to convey a variable flow rate of 4,600 cubic feet per second (cfs) at the upstream end and reducing to 3,211 cfs at the downstream end. The water is delivered from the Sacramento - San Joaquin Delta of California into the DMC via large pumps at the C.W. "Bill" Jones Pumping Plant (JPP) (formerly the Tracy Pumping Plant). This pumping plant lifts the water 200 feet to allow for gravity flow through the remaining 113 miles of the DMC, with one major diversion at the San Luis Reservoir/ O'Neill Forebay. The DMC has numerous turnouts and delivery locations along its length to meet water demands, and a series of check structures and wasteways to monitor, control, and release the flows as needed for operational and safety needs. The Delta-Mendota Canal/California Aqueduct Intertie Pumping Plant (DCIPP) was added to the DMC delivery system in 2012. One of the operational purposes of the DCIPP is to maximize the pumping at the JPP by pumping water from the DMC, which would be otherwise lost due to downstream constraints caused by subsidence, into and conveyed through the California Aqueduct and pumped into and stored in the San Luis Reservoir.

After original construction, Reclamation performed the operations and maintenance (O&M) of the DMC until 1992. From 1992 to 1998, the Recipient operated and maintained the DMC pursuant to Cooperative Agreement No. 3-FC-20-10820. From 1998 to present, the Recipient has operated and maintained the DMC pursuant to the Transfer Agreement Contract No. 8-07-20-X0354-X, which was renewed on January 14, 2020 for a 35-year term.

Since original construction, the DMC has experienced significant subsidence due to widespread groundwater pumping. Reclamation performed construction on the canal to

remediate subsidence issues in 1969 and 1977, with work consisting of raising miles of concrete liner and multiple structures. However, subsidence has continued, and the DMC is no longer able to convey the original design flows. Subsidence in the Central Valley is anticipated to continue through full Sustainable Groundwater Management Act (SGMA) implementation in 2040, further highlighting the need to address the problem now. The Delta-Mendota Canal Subsidence Correction Project (Project) is critical for the continued operations of a vital piece of the CVP.

Analysis is currently being conducted on the DMC by Reclamation's Technical Service Center (TSC). Multiple surveys have been conducted over the length of the canal and a HEC-RAS model has been developed. Presently, the canal is experiencing a 17% reduction in capacity when operated with the required one foot of freeboard. Current operational limitations are requiring the canal to be operated without freeboard, with an approximate 10% reduction in capacity. A large portion of features on the canal have been affected by subsidence. Structural issues include distorted, cracked, and failed concrete lining at a significant number of locations, reduced or zero clearance between the bottom of bridges and the canal water surface, submerged canal crossings such as irrigation and other utility pipelines, and turnouts, check structures, overchutes that have subsided and require modification to operate at the original design capacity. In addition, the unlined portion of the canal has experienced heavy erosion on both banks. As previously mentioned, subsidence has significantly reduced or eliminated freeboard. Due to the damages and significant loss of freeboard, the canal currently is unable to convey a sufficient amount of water to meet project purposes as originally intended.

The recent appraisal level study performed by Reclamation TSC identified the following canal structural modifications necessary for the DMC to convey its original design capacity:

1. Repair concrete lining (underwater): 50 locations;
2. Raise concrete lining: Approximately 95 miles;
3. Repair/Raise embankment: Approximately 43 miles on each side of the DMC;
4. Stabilize embankments of unlined portion of canal: Approximately 18 miles on each side of the DMC;
5. Rehabilitate roadway (resulting from construction activities): Approximately 113 miles on each side of the DMC;
6. Modify pipeline crossings (raise/replace/relocate): 51 structures;
7. Replace bridges: 31 City/County/State bridges and 14 farm bridges;
8. Modify storm drainage crossings (under DMC): 28 structures;
9. Modify storm drainage crossings (over DMC): 8 structures;
10. Modify storm drainage inlets: 225 structures;

11. Modify check structures (raise/modify): 16 structures;
12. Modify wasteway structures (raise/modify): 2 structures;
13. Modify turnout structures (raise/modify): 146 structures.

The Project will focus on restoring the operational capacity of the DMC, such that its original design capacity for maximum flow rates can be restored, ensuring the canal can continue meeting current and future water demands. As per recent Reclamation guidance (CMP 09-02), a complete Feasibility Report that will include analysis of various repair alternatives, economic effects of the repair and costs and project budget along with required environmental analyses (NEPA, CEQA, etc.) will need to be completed as the next step. Tasks covered with this Cooperative Agreement will include all anticipated tasks/activities associated with developing the Feasibility Report

3. Non-Competitive Selection

The DMC is a Reclamation facility, operated and maintained by the Recipient pursuant to Contract No. 8-07-20-X0354-X. The Recipient has operated and maintained the DMC since September 1992, first under the Cooperative Agreement (Contract No. 3-FC-20-10820), and then under the “Agreement between 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” (hereinafter Transfer Agreement) originally dated March 1, 1998 and currently dated January 14, 2020. The Transfer Agreement was renewed in 2020 for a 35-year term. Under the Transfer Agreement, the Recipient operates and maintains the DMC with funds collected directly from water delivery contractors and other parties entitled to utilize or receive CVP water conveyed through the DMC .

As described above, the Recipient is the responsible entity for operation, maintenance, and replacement (OM&R) of the DMC for the benefit of all CVP contractors receiving water using the DMC. They are in the unique position to be able to represent the interests of all the water districts in carrying out this scope of work.

The Recipient has a unique and detailed understanding of the DMC and its daily operations, maintenance requirements, site specific issues, security and safety knowledge, and access to the site. The Recipient has technical expertise on the canal and all appurtenant facilities and can determine the most cost-effective approach to restore operational capacity. The Recipient’s field experience operating the canal, including prior temporary capacity reduction correction design and construction activities, is critical input to the design process, providing an expert understanding of how designs would

work on the ground and suggestions for changes that would improve future operation and maintenance.

The Recipient is the local authority for the DMC (O&M responsibility) and has a unique knowledge of the effects subsidence has on the DMC capacity and is in the best position to determine a feasible solution. No other entity could achieve a similar level of familiarity and expertise without first engaging in the lengthy process of studying and analyzing the data acquired, thus increasing cost and time. The use of WIIN Act funding requires a partnership agreement that can only be entered into by a State, state entity, representative of a state, or semi-state authority and the Recipient meets this requirement. This Cooperative Agreement will serve to memorialize the partnership between the Recipient and Reclamation and ensure public and federal benefits reflect the intent of the WIIN Act.

4. Public Purpose:

The legislatively mandated public purpose of this Cooperative Agreement is to restore the design flow capacity of the DMC, as stated in Fiscal Year (FY) 2019 Consolidated Appropriations Act. This agreement furthers the public purposes of the WIIN Act by enabling Reclamation to lessen the negative impacts to local infrastructure and economies caused by over-pumping of groundwater aquifers. Because of recent drought conditions and reduced surface water deliveries in California, the over pumping of groundwater has escalated. With such large volumes of water being removed from the groundwater basin, compaction of the underlying soils is occurring, causing subsidence—a drop in the land’s elevation. Land surface elevation changes can have serious consequences for infrastructure, including diminished levee effectiveness, and damage to roads, bridges, building/structure foundations, and pipelines. Additional indirect economic losses occur from a less reliable water supply. The studies associated with this Cooperative Agreement will facilitate solutions focused on restoring reliability of contracted water supplies into the region, thereby reducing the dependence on groundwater and slowing the effects of land subsidence.

5. Objectives:

This agreement will support the ongoing Project. All tasks/activities will focus on the necessary work/activities to develop the Feasibility Report. Specific tasks to be performed include the following:

Task 1: Geotechnical Investigations

Conduct Geotechnical Engineering Investigations and obtain soils engineering data to support the technical analysis of repair alternatives and assist in developing the Feasibility Level Designs of the alternatives. The complete scope for the geotechnical investigation of the Project is divided in four phases (Phases 1 thru 4). The scope of Phase 1 was specifically developed to support the feasibility level analyses and designs

and are a part of this Cooperative Agreement. Phases 2, 3 and, 4 (Final Borrow Source) were developed to support Final Design and are therefore outside the scope of this Cooperative Agreement. In addition to Phase 1, an Initial Borrow Source Investigation will also be included in the scope of this Agreement. The information obtained will be required to support the initial alternative analyses for the feasibility level designs. Phase 1 geotechnical investigations will include Cone Penetrating Tests (CPT), Drill Holes and samples, Laboratory testing and Monitoring Wells. Initial Borrow Source Investigation will include collecting bulk samples from existing soil stock piles within Reclamation's right-of-way (ROW) and conducting laboratory tests to assist with determining scope of Final Borrow Source Investigation (Phase 4). Phase 4, Final Borrow Source Investigation, will include collecting bulk samples from existing soil stock piles identified in the Initial Borrow Source Investigation and conducting more in-depth laboratory tests. All soils engineering data obtained will be used to develop the Project Feasibility Level Designs.

Task 2: Cultural Resources (NHPA, Section 106)

To support Reclamation's effort to develop a Project Programmatic Agreement with the State Historic Preservation Office (SHPO) and studies associated with National Historic Preservation Act (NHPA) Section 106 compliance efforts. The Recipient will hire an experienced consultant to conduct surveys to develop and document Areas of Potential Effect, conduct archaeological and other field surveys including sub-surface investigations, document findings and prepare draft and final cultural resources survey reports in compliance with NHPA Section 106. Reclamation will use this information to develop and complete a Programmatic Agreement with SHPO and perform further studies as needed for the Project to be compliant with NHPA Section 106.

Task 3: Feasibility Report

Prepare Feasibility Report for the Project, which is an evaluation of technical, economic, and financial feasibility of the repair alternatives including the preferred alternative.

Task 4: Environmental Compliance

To support Reclamation's effort to complete National Environmental Policy Act (NEPA) and associated environmental compliance, including but not limited to Endangered Species Act compliance. At this time it is assumed that an Environmental Assessment (EA) and finding of No Significant Impact (FOSI) will be sufficient to meet NEPA requirements. Similarly, an IS-MND is assumed to be sufficient to meet California Environmental Quality Act (CEQA) requirements. The Recipient, or its representative, will prepare a joint NEPA-CEQA document. Cultural information obtained in Task 2 will be incorporated into the joint environmental review document. If a higher level of

environmental compliance is deemed necessary (i.e., EIS/EIR), this task and its associated scope of work, budget and schedule will require modification.

Task 5: Reclamation Design, Estimating and Construction (DEC) Review

Perform a DEC review to ensure that Project cost estimates are appropriate and there are no major technical flaws. Identify and address Project risks and uncertainties and ensure executive-level management decisions and products are sound.

Task 6: Cooperative Agreement Management

Perform all appropriate agreement and project management activities throughout the term of this Cooperative Agreement.

6. Benefits:

The completion of this project will restore the original canal capacity that will enable delivery of Project Water to the South of the Delta, CVP and San Luis Unit (SLU) Contractors. The DMC is a critical feature of the CVP. Repairing the DMC is essential to building a more resilient water supply future, one that can better withstand the long-lasting impacts of climate change while delivering clean, reliable, affordable water to its users. Reduced canal capacity due to subsidence, combined with higher operational and power costs, results in less water conveyed through the system at a higher cost. The goal of the DMC Subsidence Correction Project is to restore the design capacity flow of the canal. The DMC provides conveyance for water supplies for nearly 1.2 million acres of irrigated agriculture in the San Joaquin, San Benito and Santa Clara Valleys, approximately 2.5 million Californians, including nearly 300,000 living in disadvantaged communities, and approximately 135,000 acres of wetlands in the San Joaquin Valley. The DMC serves the San Joaquin, Santa Clara, and San Benito Valleys, where the agriculture industry is a significant regional economic driver, delivering high quality agricultural products worldwide. Water conveyed through the DMC also serves cities and industry in the Silicon Valley- a hub of the technology and innovation economies that generated \$300 billion in 2018 – approximately 10 percent of California’s GDP. Reliability of the DMC is crucial to maintaining these thriving industries.

Restoration of the DMC is consistent with Reclamation’s Mission Statement, since the canal is needed to properly manage, develop and protect water as the precious resource that it is.

7. Period of Performance:

March 9, 2021 through March 8, 2026

As of this time, all tasks are anticipated to be completed by 1/30/2022. However, Recipient requests a five-year agreement to remain flexible in the event of schedule delays or amendments to the agreement.

8. **Scope of Work:**

This agreement includes the following six (6) tasks:

Task 1: Geotechnical Investigations

The primary objective of the Geotechnical Investigations is to collect subsurface data to enable the Reclamation TSC design engineers to characterize subsurface conditions at canal embankments, lining, and structures impacted by subsidence and evaluate geotechnical engineering parameters to be used in defining the Project and identifying areas susceptible to erosion of earthen embankment and concrete lining distress. The Recipient has awarded Phase 1 of this task to Terracon, Inc. The Recipient's contract with Terracon is enclosed as Attachment-1.

Phase 1 Geotech Investigation (Recipient)

Objective: The scope was developed to collect soils engineering data for the Feasibility Study. Data obtained will provide information to develop feasibility-level design and feasibility level quantities of various construction items and support preparation of a feasibility level cost estimate. The deliverables will help designers to obtain a generic idea about the soils through CPT and drilling. Drilling is used to validate soils engineering info by collecting samples and testing them in the laboratory. There will be a significant amount of contingency built in the feasibility level design and cost estimate at this stage. *Note: The Recipient began work on this phase on March 9, 2021 after Reclamation TSC provided the Scope of Work. The Recipient entered into an agreement with Terracon Engineering on May 6, 2021 for this phase. The field work has been completed and Terracon Engineering is currently finalizing the Geotechnical Report summarizing the test results of the field data. NOTE: Pre-incurrence of costs for this phase is being pursued through this Agreement and will be discussed further in Section 13.*

Phase 1 Description of Work: Work is targeted at structure foundations to primarily provide data for the feasibility study. Some of the data collected will also be used in planning and design of embankment raises, erosion protection and lining distress. Thus, Phase 1 scope is intended to provide site-specific geotechnical data for planning, preliminary analysis, and design of:

- Structure foundations
- Embankment raises
- Erosion protection
- Lining distress repairs

Phase 1 Deliverables: A Final Geotechnical Data Report including the following information will be provided by the Recipient's contractor:

- Narrative summary of the work and methods
- Drill hole and CPT logs
- Laboratory testing data
- Photographs of samples, equipment used, and the surface completion for all drill holes.

Task 2: Cultural Resources Support Services

Cultural Resources Support Services Objective: To provide services to support Reclamation NHPA Section 106 compliance requirements for pre-construction and implementation of the Project. The Recipient will enter into an agreement with a qualified firm to perform this work.

Cultural Resources Support Services Description of Work: Scope will include pedestrian surveys, record search, mapping, geoarchaeological assessment, inventory, historic context, National Register eligibility, and finding of effect recommendation.

Cultural Resources Support Services Deliverables: The following reports will be required at completion of task:

- Draft and Final Cultural Resources Inventory Report
- Final Survey Field Methodology Report
- Geospatial and Digital Data
- Artifacts, catalogs, and associated records

Task 3: Feasibility Report

Feasibility Report Objective: Recipient will contract with a qualified consultant to prepare a Feasibility Report for the overall Project consistent with the Principles and Guidelines (P&Gs) and Reclamation guidance that will support a determination of feasibility for construction of the project.. The report will meet the requirements of Reclamation's current Directives and Standards (CMP 09-02) for Water and Related Resources Feasibility Studies and all other applicable Federal laws, policies and guidance will be followed.

Feasibility Report Description of Work: Develop Feasibility Report evaluating the supplied alternatives consistent with the Reclamation Directives and Standards.

Support Review of Feasibility Report by Reclamation's Policy Department: This task will include attending internal meetings, replying to Policy review comments, modifying the draft report to be compliant with Policy review, etc.

Feasibility Report Deliverables: The feasibility report will be developed in a progressive manner, consisting of the following tentative milestones:

- Plan Formulation Report – Technical Memorandum
- Progressive Administrative Draft Feasibility Reports (1st, 2nd, and 3rd) along with Appendices
- Final Feasibility Report with all appendices
- Appraisal Level Economic Analysis – Technical Memorandum
- Feasibility-Level Economic Analysis – Technical Memorandum

Task 4: Environmental (NEPA/CEQA) Compliance

It is assumed that an EA and Finding of No Significant Impact (FONSI) would be sufficient to meet NEPA requirements. Similarly, an IS-MND is assumed to be sufficient to meet CEQA requirements. The Recipient shall be the lead State agency for the IS pursuant to CEQA and Reclamation shall be the lead Federal agency for the EA pursuant to NEPA. To comply with NEPA and CEQA, the Recipient will hire a qualified environmental consultant to prepare a joint EA/IS-MND. If a higher level of environmental compliance is deemed necessary (EIS/EIR), this task and its associated scope of work, budget, and schedule will require modification.

Environmental Support Services Description of Work: Scope will include environmental review and technical analyses for all potentially impacted resources, preparation of administrative, public, and final environmental documents for review. Cultural information obtained in Task 2 will be incorporated into the EA/IS-MND. All public documents for posting (draft and final PDFs) must be individually 50 MB or less and prepared in compliance with Section 508 of the United States Workforce Rehabilitation Act of 1973, a Federal law mandating that all electronic information technology developed, procured, maintained, or used by the Federal government be accessible to people with disabilities (508 Compliant).

Environmental Support Services Deliverables: The following reports in Microsoft Word and PDF format will be required at completion of task:

- First Administrative Draft EA/IS-MND
- Second Administrative Draft EA/IS-MND
- Public Draft EA/IS-MND (508 Compliant PDFs)
- Administrative Draft Final EA/IS-MND
- Public Final EA/IS-MND (508 Compliant PDFs)

Upon completion of the First Administrative Draft EA/IS joint document, Reclamation and the Recipient will review and comment. Those comments will be addressed in the Second Administrative Draft EA/IS joint document, which will be sent to Reclamation and the Recipient for concurrence. Upon concurrence, a 508 Compliant Public Draft EA/IS-MND will be created and provided to Reclamation to release for public review. If public comments are received on the draft document, major comments will be summarized and responded to in a Final EA/IS-MND. An Administrative Draft Final EA/IS-MND will be provided for Reclamation and Recipient to review and approve. Once completed, a Final 508 Compliant EA/IS-MND will be provided for Reclamation to post.

Task 5: Reclamation Design, Estimating and Construction (DEC) Review

DEC Review Objective: Recipient to participate in the Project DEC review, including the planning and coordination, to ensure that project cost estimates are appropriate, there are no major technical flaws, Project risks and uncertainties are identified and addressed, and executive-level management decisions and products are sound.

DEC Review Description of Work: Reclamation to lead DEC Review through their DEC Office in Denver, CO. Recipient to assist with the planning/scheduling and coordination of the Project DEC Review and to participate in the DEC review on the Project. Assist in the development of the draft DEC Review Report. Provide assistance in the preparation of the DEC Review Final Report of Findings and the Joint Resolution of Findings Memo.

DEC Review Deliverables: The following deliverables are anticipated to be associated with the DEC Review:

- DEC Review Final Report of Findings
- Joint Resolution of Findings Memo

Task 6: Cooperative Agreement Management Activities

Cooperative Agreement Management Activities Objective: To ensure all Cooperative Agreement tasks are effectively managed throughout the term of this Cooperative Agreement.

Cooperative Agreement Management Activities Description of Work: Provide all resources (labor and non-labor) necessary to ensure all Cooperative Agreement Tasks and associated Professional Services Agreements (PSA) are managed in compliance with the requirements of this Agreement. Typical project management/administration activities include the following:

- Coordination of daily Project activities;
- Scheduling, planning and conducting meetings/presentations;
- Preparation and reproduction of meeting notes, handouts, and deliverables;
- Coordination and communication with Project parties;
- Professional Services Agreements (PSA) performance management;
- Preparation of monthly progress reports;
- Processing of all PSA invoices;
- Participation in all Project progress meetings;
- Recipient labor and non-labor cost tracking and management; and
- Cooperative Agreement Administration activities in compliance with Section 15 of this Agreement.

NOTE: Recipient labor and non-labor expenses will be tracked utilizing the Recipient's work & asset management system and summarized in associated reports.

Cooperative Agreement Management Activities Deliverables: The following deliverables are anticipated to support this task:

- Updated Project Schedules
- Meeting notes/minutes when necessary
- Quarterly Progress Reports per Section 15
- Quarterly Invoices w/the following supporting documents:
 - Labor Reports & Summaries
 - Expense Reports & Summaries
 - PSA Invoices
 - Copies of PSA Deliverables

9. Milestones/Timeline/Schedule:

Milestone/ Task/ Activity	Planned Start Date	Planned Completion Date
Task 1 – Geotechnical Investigations Phase 1	05/06/2021	10/01/2021
Task 2 – Cultural Resources Support Services	10/01/2021	10/17/2022
Task 3 Feasibility Report	10/01/2021	10/17/2022
Task 4 – Environmental (NEPA/CEQA) Compliance	10/01/2021	10/17/2022
Task 5 – Reclamation Design, Estimating and Construction (DEC) Review	11/29/2021	12/3/2021
Task 6 – Cooperative Agreement Management Activities	03/01/2021	12/20/2022

10. Recipient Responsibilities:

The Recipient shall carry out the Scope of Work (SOW) in accordance with the terms and conditions stated herein. The Recipient shall adhere to Federal, State, and local laws, regulations, and codes as applicable, and shall obtain all required approvals and permits. If the SOW contains construction activities, the Recipient is responsible for construction inspection, oversight, and acceptance. If applicable, the Recipient shall also coordinate and obtain approvals from site owner and operators.

The Recipient will:

1. Adhere to all Federal, State, and local laws and regulations and codes, as applicable, and obtain all required approvals and permits. Coordinate and obtain approvals from site owners and operators;
2. Perform all tasks and provide all deliverables identified in this Agreement to Reclamation;
3. Participate in regular meetings with Reclamation to review project status, discuss designs, and other aspects of Agreement;
4. Submit quarterly invoices to Reclamation for all incurred costs associated with the approved Tasks; and
5. Submit quarterly and final written reports as specified in this agreement.

11. Reclamation Responsibilities:

Reclamation will monitor and provide Federal oversight of activities performed under this Agreement. Monitoring and oversight include review and approval of financial status and performance reports, payment requests, and any other deliverables identified as a part of the SOW. Additional monitoring activities may include site visits, conference calls, and other non-site and off-site monitoring activities. At the Recipient’s request, Reclamation will also provide technical assistance to the Recipient in support of the SOW and objectives of this Agreement. Substantial involvement by Reclamation is anticipated during the performance of activities funded under this Cooperative Agreement. In support of this Agreement, Reclamation will be responsible for the following:

- Acting as NEPA lead agency for the Project;
- Coordinating with the Recipient to ensure compliance with NEPA, ESA and NHPA;
- Completing a Programmatic Agreement with SHPO for compliance with NHPA Section 106 requirements;
- Reviewing and commenting on environmental documents;
- Reviewing and finalizing FONSI;
- Complete Initial Borrow Source Investigation, Providing regular reviews as a part of Feasibility Report finalization;
- Providing additional review and coordinate with recipient as described throughout the SOW.

12. Budget Estimate

As Federal financial assistance agreements are cost-reimbursable, the budget provided is for estimation purpose only. Final costs incurred under the budget categories listed may be either higher or lower than the estimated costs. All costs incurred by the Recipient under this agreement must be in accordance with any pre-award clarifications conducted between the Recipient and Reclamation, as well as with the terms and conditions of this agreement. Final determination of the allowability, allocability, or reasonableness of costs incurred under this agreement is the responsibility of the Grants Officer. Recipient is encouraged to direct questions regarding allowability, allocability or reasonableness of costs to the Grants Officer for review prior to incurrence of the costs in question. Estimated budgets for the Recipient and Reclamation to undertake the tasks included in this agreement are provided below in Tables 1 and 2. Total estimated project cost is summation of totals of the tables (\$4,376,080.00 + \$1,301,000) = **\$5,677,080**. Table 3 provides the source to fund this agreement.

Table 1 : San Luis & Delta-Mendota Water Authority Estimated Budget

Cooperative Agreement Development	\$ 34,387.16

Geotechnical Investigation RFP Development and Award	\$ 53,590.17
Task 1 : Geotechnical Investigation Phase 1	\$ 1,050,218.42
Task 2: Cultural Resources (Section 106) Support Services	\$ 653,107.02
Task 3: Congressional Feasibility Report	\$ 1,448,663.14
Task 4: Environmental Compliance	\$ 680,583.10
Task 5: Reclamation Design, Estimating and Construction (DEC) Review	\$ 19,510.81
Task 6: Cooperative Agreement & Project Management Activities	\$ 67,056.30
Total (without Indirect Costs)	\$ 4,007,200.00
SLDMWA Indirect Costs	\$ 368,880.00
Grand Total	\$ 4,376,080.00

Table 2: Reclamation Estimated Budget

Task 1 :Geotechnical Investigations	\$	80,000.00
Task 2 : Cultural Resources Support Services	\$	125,000.00
Task 3: Feasibility Report		\$595,500.00
Task 4: Environmental Compliance	\$	90,000.00
Task 5: Reclamation Design, Estimating and Construction (DEC) Review	\$	110,500.00
Task 6: Cooperative Agreement & Project Management Activities		\$ 300,000.00
Total		\$ 1,301,000.00

Table 3 : Funding Sources

Funding Sources	% age of Total Project Cost	Total Cost by source
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Recipient Funding (Non-Federal cost share)	50%	\$2,838,540.00
Reclamation Funding (WIIN)	37%	\$2,100,000.00
Reclamation Funding (WRR)/other	13%	\$738,540.00

13. Pre-Award Incurrence of Costs:

The Recipient shall be entitled to reimbursement of cost on and after March 9, 2021 which if had been incurred after this Agreement was entered into, would have been allowable, allocable and reasonable under the terms and conditions of this Agreement. The Pre-Award incurred costs are associated with the following activities and tasks:

Cooperative Agreement Development: Program management costs were incurred from May 2021 to September 2021 to develop and enter this Cooperative Agreement.

Geotechnical Investigation RFP Development to Award: Recipient began working on developing the RFP for Task 1 – Geotechnical Investigations, Phase 1 on March 9, 2021 in order to execute the contract by May 6, 2021.

Task 1 – Geotechnical Investigations, Phase 1: Recipient executed the contract agreement with the engineering firm, Terracon, on May 6, 2021. Early execution of Phase 1 of the contract was critical to support the Feasibility Level design and cost estimate that Reclamation TSC is currently working on and to ensure the tight schedule was maintained.

Cost Sharing Requirement: At least 50% non-Federal cost share is required for all costs included in this Agreement. Reimbursement of pre-award costs is limited to Federal cost-share percentage identified in this Agreement. The Federal share of allowable costs shall not be expended in advance of the Recipient’s non-Federal share. It is expected that expenditure of Federal and non-Federal funds based upon the cost share percentage above shall occur concurrently. If a bona fide need arises which requires the expenditure of Federal funds in advance of the Recipient share, then the Recipient must request written approval from the Grants Officer prior to this expenditure. Recipient may expend their agreed upon share of costs in advance of the expenditure of Federal funds without prior written approval.

Reporting:Reports and Deliverables

	Interim Reports	Final Report
Performance Progress Report		
Format	Hard copy and electronic copy in PDF or Microsoft Word format	Hard copy and electronic copy in PDF or Microsoft Word format
Form	No specific form required. See content requirements below.	No specific form required. See content requirements below.
Reporting Frequency	Quarterly	Final Report due within in 90 days after the end of period of performance
Reporting Periods	October 1 through March 31 and April 1 through September 30	Entire period of performance
Due Dates	Within 30 days after the end of the Reporting Period	Within 90 days after the completion date of the agreement
Send one original hard copy to each:	Grant Officer (GO) and Grant Officer's Technical Representative (GOTR)	GO and GOTR
Send one electronic copy to:	GOTR	GOTR
Financial Status Report		
Format	Hard copy	Hard copy
Form	SF-425	SF-425
Reporting Frequency	Quarterly	Final report due within in 90 days after end of the period of performance
Reporting Period	October 1 through March 31 and April 1 through September 30	Entire period of performance
Due Date	Within 30 days after the end of the Reporting Period	Final Report due within in 90 days after the end of the period of performance
Send one original to each:	GO and GOTR	GO and GOTR

In each report, the Recipient shall provide the following information:

- Updated Milestone/ Timeline/ Schedule showing completed tasks, or noting what percent the task is completed.

- Explanation of why established milestones for the period were not met, if applicable.
- Additional pertinent information, such as analysis and explanation of cost overruns or high unit costs.

14. Recipient Key Personnel: (contact information) Name of person Project/Program Manager, Title, Address, Phone, Email and etc.

Recipient

San Luis & Delta-Mendota Water Authority
15990 Kelso Road
Byron, CA 94514

Points of Contact (POC)

San Luis & Delta-Mendota Water Authority
Pablo R. Arroyave
Chief Operating Officer
15990 Kelso Road
Byron, CA 94514
(209) 832-6230
pablo.arroyave@sldmwa.org

15. GOTR: (contact information) Name of person, Title, Address, Phone, Email and etc.

Aniruddha Bhattacharya (Babi)
Project Manager-Civil Engineer (WCO)
Bureau of Reclamation
2800 Cottage Way
Sacramento CA 95825
(916) 978-5007

16. Post-Award Monitoring Plan:

- (a) Monitoring by Recipient: The Recipient is responsible for oversight of the operations of Federal award supported activities. The recipient shall monitor its activities under Federal awards to assure compliance with applicable federal requirements and performance exceptions are being achieved. Monitoring by the Recipient must cover all tasks, functions or activities they are responsible for as described in the SOW of this Agreement.

(b) Non-construction performance Reports: Reclamation will use standard OMB-approved data elements for collection of performance information (including performance progress reports as listed on the OMB website).

(1) The Recipient shall submit performance reports at the interval required by Reclamation to best inform improvements in program outcomes and productivity. Intervals shall be quarterly except for unusual circumstances, for example where more frequent reporting is necessary for effective monitoring of this Federal award or could significantly affect program outcomes. Annual reports shall be due 90 calendar days after the reporting period; quarterly or semiannual reports shall be due 30 calendar days after the reporting period. Alternatively, reclamation may require annual reports before the anniversary dates of multiple year Federal awards.

The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by the recipient, Reclamation may extend the due date for any performance period.

(2) The Recipient must submit performance reports using OMB approved government-wide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following:

- (i) A comparison of actual accomplishments to the objectives of the Federal awards established for the period. Where the accomplishments of the Federal Award can be quantified, a computation of cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data analysis would be informative to the Federal awarding agency program, Reclamation should include this as a performance reporting requirement.
- (ii) The reasons why established goals were not met, if appropriate.
- (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) Construction performance reports: For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by federal awarding agencies under Federal awards and subawards for construction Reclamation may require additional performance reports only when considered necessary.

(d) Significant developments: Events may occur between the scheduled performance reporting dates that have significant impact on the supported activity. In such cases, the Recipient must inform Reclamation as soon as the following types of conditions become known:

- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

Reclamation requires Performance reporting for all financial assistance awards, both Construction and non-Construction. Performance reports for construction agreements shall meet the same minimum requirements as outlined in 2CFR 200.328(b)(2).

17. Government-Furnished Property:

No government furnished property is associated with this agreement.

18. Real Property:

No Real Property will be acquired associated with this agreement.

19. Research Agreement:

No Patents or Inventions will result from this agreement.

MEMORANDUM OF AGREEMENT
FOR CONDUCTING FEASIBILITY LEVEL ACTIVITIES AND PREPARATION OF A
FEASIBILITY REPORT FOR THE PROPOSED
DELTA-MENDOTA CANAL SUBSIDENCE CORRECTION PROJECT
AND
SHARING OF COSTS

By and Between

United States Department of the Interior

Bureau of Reclamation, California-Great Basin

and

San Luis & Delta-Mendota Water Authority

This Memorandum of Agreement (MOA) is made and entered into by and between the United States Department of the Interior, Bureau of Reclamation, California-Great Basin (Reclamation), and the San Luis & Delta-Mendota Water Authority (Authority) (Parties) for the purposes of undertaking and completing the Final Feasibility Report for the proposed Delta-Mendota Canal Subsidence Correction Project (Project).

WHEREAS, on June 22, 2020, Reclamation through a memo from the Assistant Secretary for Water & Science has been authorized to conduct “Studies” for the Project and received \$3 million for this purpose through its FY 2017, FY 2018, and FY 2019 Funding for Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 (Public Law 114-322) Storage Projects, eligible under Section 4007 of the WIIN Act.; and

WHEREAS, the Authority and Reclamation desire to enter into this MOA to conduct feasibility level activities and prepare a Feasibility Report for the Project as defined by the scope in Article (5c) of this MOA and to govern sharing of costs for the same; and

WHEREAS, Reclamation is hereby joining the Authority in conducting and advancing the Feasibility Report, and each entity recognizes the unique relationships and opportunities, mutual and exclusive needs and dependencies, Federal and non-Federal standards and procedures, potential outcomes and applications of the activities, and related decision-making and approval processes; and

WHEREAS Reclamation is the lead agency for purpose of compliance with the National Environmental Policy Act and the Authority is the lead agency for the purpose of compliance with the California Environmental Quality Act; and

WHEREAS, Reclamation and the Authority have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing in the development of the Feasibility Report for the Project in accordance with the terms and conditions of this MOA for delivery to the congress.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions: The following terms shall have the following meanings when used in this MOA:

- 1(a) Parties: Incudes both Reclamation and the Authority.
- 1(b) Cost-Sharing: Means the Parties' contribution as in-kind services, as further defined in Articles 1(c) and 5(a) of this MOA, or contributed funds, if a separate Contributed Funds Agreement is executed by the Parties.
- 1(c) In-Kind Service: Means eligible donated time and effort, real and personal property, and goods and services, as defined by the Department of the Interior. In-kind services may be used as a cost-share, but the value of the in-kind contributions must be evaluated and documented. Valuation of in-kind services must be in accordance with 2 CFR Part 200.
- 1(d) Confidential Information: Means any information that is privileged or protected from public release under the Freedom of Information Act (FOIA), 5 USC § 552(b), or the California Public Records Act (CPRA), California Government Code § 6250 et. seq.
- 1(e) Intellectual Property: Means any information that is legally protected through patents, copyrights, trademarks, and trade secrets, or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.
- 1(f) Confidential Business Information: Means trade secrets or commercial or financial information that is privileged or confidential under the meaning of FOIA, 5 USC § 552(b)(4), or the CPRA. Information shall be marked or identified as provided for in Article 7(c) of this MOA.
- 1(g) Key Personnel: Includes all team members involved in the administration, management, or performance of the Preconstruction Activities as defined in this MOA.
- 1(h) Subject Invention: Means any invention or other intellectual property conceived or first reduced to practice under this MOA which is patentable or otherwise protectable

under Title 35 of the United States Code, under 7 USC § 2321, et. seq., or under the patent laws of a foreign country.

- 1(i) Project Management Plan (PMP): Means the document prepared by the Authority in coordination with Reclamation, and routinely updated by Authority in coordination with Reclamation throughout the duration of the Project to reflect the current Project schedule and approach, that serves as a guideline describing how the Parties will manage and conduct the Project.
 - 1(j) Non-Federal Cost-Share: The percentage of the total cost incurred in all activities related to development of the Feasibility Report assigned to the Authority, the non-Federal partner, in accordance with Article 5(a) of this MOA.
 - 1(k) Federal Cost-Share: The percentage of the total cost incurred in all activities related to development of the Feasibility Report assigned to the Federal Government, in accordance with Article 5(a) of this MOA.
2. Purpose of MOA: The Parties agree that the purpose of this MOA is to clearly define the obligations and responsibilities of the Parties to complete all activities related to development of the Final Feasibility Report with all Appendices and Addendums, if any, and to share costs as outlined herein, consistent with the authorizations identified in Article 3 of this MOA and other pertinent Federal, State, and local laws and policy.
 3. Authority for MOA: Reclamation is authorized to enter into this MOA pursuant to the WIIN Act, as enacted on December 16, 2016 (P.L. 114-322).
 4. Roles and Responsibilities of Reclamation and the Authority
 - 4(a) Executive Steering Committee (ESC): Each Party to this MOA will assign an executive-leadership-level representative to participate on the ESC for the duration the term of this MOA. Members of the ESC will provide both program and project leadership, address issues affecting Project progress, and identify and strategize resolution of evolving issues or conditions. The ESC will meet on an as-needed basis.
 - 4(b) Project Management Team (PMT): A PMT shall be established. Each Party will identify a Project Manager and representatives to participate on the PMT, and any technical teams and subgroups. Meetings will be held as needed and only if necessary, beyond the responsibilities of the Project Development Team (Article 4(c)) and used to track the status of the Feasibility Report Activities, coordinate reviews of documents, share both Parties' perspectives on various topics, prepare briefings for the ESC, and any other items the Parties wish to discuss related to the Project. The PMT shall, on a quarterly basis, share an accounting of the actual expenses incurred by each Party under this MOA in accordance with Article 5 of this MOA.
 - 4(c) Project Development Team (PDT): A PDT shall be established to provide day-to-day oversight and review of work products. Each Party will identify representatives to

participate on the PDT. The PDT is expected to meet as needed to maintain the progress of the Project.

- 4(d) Cooperative Partnership: The Parties will participate cooperatively as both cost-share and Project partners to complete the Feasibility Report Activities effectively and efficiently, with intent to manage and perform joint and/or separate activities; monitor and account for actions; and produce documents for review, revision, and distribution to support decision-making, approval, and related actions. The Parties commit to sharing all required documents (e.g., technical memoranda, draft, and final reports, supporting materials, work products, and summaries of expenditures and expenses) within their respective authorities. Each Party is responsible for ensuring their respective policy, technical, and legal requirements are met. The Parties agree to meet the Project Schedule to the extent practicable.
- 4(e) Coordination with Local Water Agencies: The Authority will coordinate with the local water agencies if and when any additional parties' involvement is necessary to expedite and or fulfill the requirements to complete the Feasibility Report or any activity/activities associated with the development of the Feasibility Report.

5. Financial Obligations

- 5(a) Cost-Sharing: Reclamation and the Authority will share the eligible costs of the Activities and any supporting documentation within the scope of this MOA. The proportionate cost-share between the Authority and Reclamation is established by Reclamation Directives and Standards CMP 09-02 and CMP 09-04. The minimum non-Federal cost share will be 50% of the total Feasibility Study costs. The Federal cost share must not exceed the non-Federal cost share at any time.
- (a)(1) In accordance with Reclamation Directives and Standards, the Authority shall account for its actual expenses incurred participating in the Project. These expenses shall be provided to Reclamation on a quarterly basis. Requirements of such accounting shall, at a minimum, include the following:
 - 5(a)(1)(i) An explanation, in the form of a progress report, of the work performed for each activity completed during the reported quarter.
 - 5(a)(1)(ii) Progress reports shall include a summary of all costs incurred by the Authority. Allowable costs include payroll costs, contract costs, overhead costs, expense vouchers, and other costs as provided in the applicable Office of Management and Budget regulations. Each activity should be supported by reports from the Authority's financial system providing a breakdown of actual costs incurred for the current submission and total costs to date for each activity.

- 5(a)(1)(iii) A cover letter or memorandum signed by an authorized representative of the Authority should accompany the submission. The cover letter shall reference this MOA and any enclosures (i.e., progress report, expenses/payroll summary).
 - 5(a)(1)(iv) Reclamation will prepare similar progress reports describing costs incurred by Reclamation and will submit them to the Authority on a quarterly basis.
- 5(b) Financial Obligations: This MOA is not a funding document and does not obligate or transfer funds between the Parties. Reclamation, subject to the availability of funds through the Federal appropriations process for this Project, shall expend funds on federally authorized Study Activities pursuant to Federal laws, regulations, and policies, or may enter into a Financial Assistance Agreement with the Authority for the purpose of sharing costs for those activities led by the Authority.
- 5(c) Scope of the MOA: The scope of the MOA includes all tasks to develop a Feasibility Report for the Project construction. Reclamation has entered into a Financial Assistance Agreement with the Authority where the scope is described in detail identifying the deliverables for each major milestone, Reclamation and Authority responsibilities, estimated cost for each activity and estimated time for each activity. The scope can be divided into the following basic tasks: (i) Geotechnical Investigations; (ii) Cultural Resources (NHPA, Section 106) Compliance, (iii) Feasibility Report Development; (iv) Environmental (NEPA) Compliance; (v) Reclamation's DEC Review and obtaining Joint Resolution Memo, and (vi) Management of tasks associated with the development of the Feasibility Report, including management of the Financial Assistance Agreement. If in the future the Parties identify new tasks to fulfill the requirements of the Feasibility Report, the scopes and requirements for those tasks will be negotiated between the Parties.
- 5(d) In-Kind Services: Submission of documentation for in-kind services shall be submitted quarterly by the Authority and Reclamation. Quarterly accounting must detail work done for agreed-upon items. Only costs incurred against a cost-share agreement need to be documented and submitted for approval. Project numbers must be used to distinguish various tasks and work phases. Items required for proper verification of work done include certified payroll, applicable contract numbers (i.e., consultant contracts), quarterly reports that coincide with Federal reporting requirements and generally accepted accounting principles, identification of cost-share partners, and scopes of work. Services cannot be included in any other Federal award in a current or prior period and their value must be based upon current market prices.
- 5(e) Following the termination of this MOA, Reclamation shall perform a final accounting in accordance with Article 5 of this MOA to determine the contributions provided by the Authority and to determine whether the Authority has met its proportionate cost-share obligation.

- 5(f) The Authority shall not use Federal funds to meet Authority's share of the costs under this MOA, unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

6. Term and Termination

- 6(a) Term: This MOA shall take effect on the executed date of this document. Unless terminated per Article 6(e), this MOA will expire five (5) years from the date of Reclamation's signature to this MOA or upon a final accounting of all Activities in accordance with Article 5, whichever is earlier.
- 6(b) Amendment: If either Party desires a modification to this MOA, the Parties shall confer in good faith to determine the desirability of such modification. Any amendment must be mutually agreed upon in writing by Reclamation and the Authority. Any such modification shall not be effective until a written amendment to this MOA is signed by Reclamation and the Authority.
- 6(c) Termination: Prior to the expiration of this MOA, and upon no fewer than sixty (60) calendar days' written notice to the other Party, either Party may elect to terminate this MOA or to suspend future performance under this MOA without penalty. In the event that either Party elects to terminate this MOA pursuant to this Article, the Parties shall conclude their activities under this MOA and proceed to a final accounting in accordance with Article 5 of this MOA. Any termination of this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously incurred.
- 6(d) Suspension: If either Party suspends its performance, the other Party is relieved of any obligation to perform under this MOA until the suspension is terminated. Any such suspension shall remain in effect until either Reclamation, or the Authority terminates this MOA, the MOA terminates per Article 6(a), or the suspending Party notifies the other Party of its intent to end the suspension and perform in accordance with this MOA. Any suspension of future-performance under this MOA in accordance with this Article shall not relieve the Parties of liability for any obligation previously incurred. Financial Obligations and payment for in-kind services to the date of suspension or termination shall be satisfied.

7. Publications, Reports, and Confidentiality

- 7(a) Publications: The Parties understand and agree that this MOA may be disclosed to the public in accordance with either FOIA or the CPRA. Subject to the requirements of confidentiality, intellectual property, and preservation of rights in Subject Inventions, as further described in Articles 1(d), 1(e), 1(f), and 1(h) herein, either Party may publish the results of the Project described in this MOA. Any jointly published report, memorandum, whitepaper, technical report, or other document must be consistent with applicable Department of the Interior and Reclamation procedures, requirements, and policy, provided:

- 7(a)(1) The other Party is allowed reasonable review time to review the proposed publications(s) at least twenty (20) days prior to submission for publication by submission to the authorized agent.
- 7(a)(2) The final decision as to the publication content rests with the Party that writes the publication(s).
- 7(b) Reports: The results of the science, engineering, operations, and technology data that are collected, compiled, and evaluated pursuant to this MOA, including interim administrative drafts, and final draft reports and/or supporting documents, shall be shared, and mutually interchanged by the Parties, consistent with Article 4 of this MOA, and pertinent Reclamation directives, standards, and policy.
- 7(c) Confidentiality: Any Confidential Information or Confidential Business Information used in implementing this MOA shall be clearly marked “CONFIDENTIAL” or “PROPRIETARY” by the submitter and shall not be disclosed by the recipient without permission of the owner in accordance with applicable law (for example, Executive Order 12600) and this MOA. To the extent either Party orally submits such Confidential Information or Confidential Business Information to the other Party, the submitting Party will prepare a document marked “CONFIDENTIAL” or “PROPRIETARY” embodying or identifying in reasonable detail such orally submitted information and provide the document to the other Party within thirty (30) days of disclosure.

Any Confidential Information or Confidential Business Information disclosed by one Party to the other Party shall remain confidential and protected from disclosure to the maximum extent allowable by applicable law. Neither Party shall be bound by confidentiality if the information received from the other Party:

- 7(c)(1) Is already available to the public or the recipient.
- 7(c)(2) Becomes available to the public through no fault of the recipient.
- 7(c)(3) Is non-confidentially received from another Party legally entitled to it.

It shall not be a breach of this MOA if the recipient of the information is required to disclose the information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either Party under this MOA; provided that the recipient of the information shall provide prompt prior notice thereof to the other Party in order to seek a protective order or otherwise prevent such disclosure, and provided further that the information otherwise shall continue to be confidential.

7(d) Intellectual Property: Unless otherwise agreed by the Parties, custody, and administration of inventions, including Subject Inventions, made as a consequence of, or in direct relation to, the performance of activities under this MOA shall remain with the respective inventing Party. In the event that an invention is made jointly by employees of the Parties or an employee of an agency's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

8. General

8(a) Liability: It is understood and agreed that neither Party to this MOA shall be responsible for any damages or injuries arising out of the conduct or activities governed by this MOA, except to the extent that such damages or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC § 2671, et seq., while the Authority's liability shall be limited by the California Government Claims Act, California Government Code § 810 et seq. Neither Party shall be liable for the negligent or wrongful acts or omissions of the other Party's employees, agents, or officers.

8(b) Limitations: This MOA sets out the Parties' intentions and objectives and does not apply to any person or entity outside the Authority and Reclamation. This MOA is not intended to and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person, unless expressly stated herein.

8(c) Notices: Notices between the signatories and copies of correspondence shall be sent to the Reclamation and the Authority points of contact below:

Bureau of Reclamation

Ernest A. Conant
Regional Director
2800 Cottage Way
Sacramento, CA 95825
(916) 978-5000

San Luis & Delta-Mendota Water Authority

Federico Barajas
Executive Director
PO Box 2157
842 6th Street
Los Banos, CA 93635
(209) 826-9696

- 8(d) Anti-Deficiency Act: All activities, responsibilities, and communications made under or pursuant to this MOA are subject to the available appropriations and each Parties' budget priorities, as determined by each Party. No provision herein shall be interpreted to require obligation or payment of funds. Further, no provision shall be interpreted in violation of the Anti-Deficiency Act, 31 USC § 1341, and no liability shall accrue to the United States in the event that funds are not appropriated or allotted. No liability of one party may be transferred to the other party.
- 8(e) Counterparts: This MOA shall be executed in duplicate and each original, once fully executed, shall be equally effective.
- 8(f) Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise to carry out its obligations in this MOA shall ensure that any subcontractor is aware of and abides by the terms of Article 7 of this MOA to ensure that confidentiality is not breached and rights in Subject Inventions are not compromised.
- 8(g) Assignment: Neither Party has the right to assign this MOA, or any of its responsibilities hereunder, without the written consent of the non-assigning Party.
- 8(h) Endorsement: The Authority shall not in any way state or imply that this MOA, or the results of this MOA, is an endorsement by the Federal government, Department of the Interior, or Reclamation, or its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.
- 8(i) Regulatory Compliance: Both Parties acknowledge and agree to comply with all applicable laws and regulations, including environmental, cultural, and paleontological resource protection laws and regulations, in carrying out the activities or projects under this MOA. These regulatory compliance requirements may include, but are not limited to, the National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, the National Historic Preservation Act, applicable implementing regulations, and consultation with potentially affected Federally recognized tribes.
- 8(j) Disputes: Any dispute arising under this MOA which cannot be readily resolved shall be submitted jointly to the Key Personnel officials identified above. Each Party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes if mutually acceptable to the Parties. Pending the resolution of any dispute or claim, the Parties agree that performance of all obligations shall be pursued diligently.

9. Signatures and Authorities: In Witness Whereof, the Parties execute this MOA on the date and year indicated below, which shall become effective upon the signatures of both Parties.

9(a) Bureau of Reclamation

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
REGION 10 - CALIFORNIA-GREAT BASIN

Regional Director

Date

9(b) San Luis & Delta-Mendota Water Authority

Authorized Representative

Date

Cooperative Agreement Estimated Costs Break Down

USBR Expenditures	\$ 1,301,000.00
SLDMWA Expenditures	\$ 4,376,080.00
Cooperative Agreement Total:	\$ 5,677,080.00

SLDMWA/USBR Cost Share (50/50 Cost Share Required): **\$ 2,838,540.00**

SLDMWA Funding

FY21 EO&M	\$ 540,100.00
FY22 EO&M	\$ 500,000.00
FY22 RO&M (In-Kind)*	\$ 226,535.75
FY23 Funding (Proposed)	\$ 1,571,904.25
Total SLDMWA Funding:	\$ 2,838,540.00

USBR Reimbursements to SLDMWA

SLDMWA Expenditures	\$ 4,376,080.00
SLDMWA Cost Share	\$ 2,838,540.00
Amount to be Reimbursed by USBR:	\$ 1,537,540.00

Proposed 1st Invoice Post Award

Cooperative Agreement Development	\$ 34,387.16
Geotech RFP Development to Award	\$ 53,590.17
Task 1 Geotechnical Investigations	\$ 1,050,218.42
Total Amount:	\$ 1,138,195.75
Remaining to be Progress Billed:	\$ 399,344.25

***FY22 RO&M (In-Kind)**

<i>Cooperative Agreement Development</i>	\$ 34,387.16
<i>Geotech RFP Development to Award</i>	\$ 53,590.17
<i>Geotech Contract Management</i>	\$ 138,558.42
	\$ 226,535.75

USBR Funding

WIIN Act Funding	\$ 2,100,000.00
WRR/Other	\$ 738,540.00
Total USBR Funding:	\$ 2,838,540.00