



## 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

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### 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**

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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.

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.

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RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION

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

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PEST MANAGEMENT

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

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

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

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

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MEDIUM FOR TRANSMITTING PAYMENTS

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

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

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SUSTAINABLE OPERATION AND MAINTENANCE

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

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COOPERATION/MUTUAL AID

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

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

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.



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IN WITNESS WHEREOF, the Parties hereto have executed

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

1131

THE UNITED STATES OF AMERICA

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By: \_\_\_\_\_

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Regional Director, Mid-Pacific Region

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Bureau of Reclamation

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SAN LUIS & DELTA-MENDOTA

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WATER AUTHORITY

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(SEAL)

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By: \_\_\_\_\_

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Chairman, Board of Directors

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Attest:

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Secretary