

DELTA FERRY AUTHORITY
(Joint Exercise of Powers Agreement)

1. Parties. Effective September 30, 1987, Reclamation District No. 2026 (hereinafter "Webb") and Reclamation District No. 2059 (hereinafter "Bradford") mutually promise and agree as follows:

2. Purpose. It being recognized that the County unilaterally elected to withdraw from a previous three-party joint power agreement called the Delta Ferry Authority, Webb and Bradford agree to attempt to operate the ferry for limited public transportation between the islands in the Contra Costa County area as set forth on Exhibit "A" subject to their limited financial ability.

3. Method. The parties to this agreement desire by a joint exercise of their common powers to create and constitute a new public transportation ferry authority separate and distinct from each party to this agreement, with the authority to own, operate, and administer a public ferry transportation service within the area shown on attached Exhibit "A".

4. Creation of Authority. Upon the effective date of this agreement, there is established and constituted the Delta Ferry Authority, hereinafter referred to as "DFA" or "Authority", a separate and distinct public entity, as the authority to exercise the common powers provided for in this agreement and to administer or otherwise execute this agreement.

5. Board of Directors. a. Authority (DFA) shall be governed by a Board of Directors, hereinafter referred to as "Board", comprised of three members, with the governing body of each party to this agreement appointing members as follows:

Webb, one member;
Bradford, one member;
Third member to be appointed by other two members.

Each party may appoint an alternate representative to act in the absence of the regular representative. Members selected will serve terms or at the pleasure of their respective governing bodies as set forth in their order of appointment on file with the Board's secretary.

b. Board members may include elected or appointed members of the governing bodies of the party jurisdictions or employees of these parties. A member of the governing body of a party jurisdiction or employee thereof shall not be prohibited by reason of such office or employment from

also participating as a member of the Board of Directors of Authority while it is considering or acting upon a contract, lease, or other transaction with such member jurisdiction.

c. A majority of the members of the Board shall constitute a quorum for the conducting of business, except that less than a quorum may adjourn a meeting. At any meeting, including its organizational meeting, the Board may consider such matters as it deems proper for carrying out the purposes of this agreement, provided that no item shall be considered, except by unanimous consent of the Board, unless written notice shall have been provided to the Board and its party jurisdictions at least forty-eight (48) hours in advance of the meeting at which such item is to be considered. No Board member may vote at a meeting or otherwise participate therein until a certified copy of the respective party jurisdiction's order of appointment of the member to the Board has been filed with the Board's secretary.

d. At its first meeting the Board shall:

- (1) Appoint a chairperson and vice-chairperson;
- (2) Establish any necessary rules of procedure; and
- (3) Establish a procedure for calling meetings including the fixing of a time and place for regular meetings.

6. General Powers. Subject to the other terms and conditions of this agreement and any restrictions provided in law, AUTHORITY shall have the power to:

a. Own, develop, operate, maintain, and administer a public ferry transportation system, boat and related docking facilities or contract with any person, firm, or public agency to use, manage, or operate such ferry and system facilities or portions thereof for public ferry transit purposes within the area described in attached Exhibit "A".

b. Contract with any person, firm, or public agency to provide and/or manage public ferry facilities and services, or to improve such facilities and services; provided that, AUTHORITY may not enter into such a contract exceeding the maximum term of this Agreement or its earlier termination.

c. Apply for, receive, and utilize all forms of financial assistance for public ferry transportation facilities or services, including contributions, grants, allocations, loans, revenues, or other assistance from State, Federal, county, reclamation district, or other sources (establishing charges as hereinafter provided in §14g, etc.) available for the planning, acquisition, construction, maintenance, operation, administration, or other support of such ferry facilities or services.

d. Hire agents and employees and contract for professional or other services.

e. Enter into contracts.

f. Sue and be sued.

g. Acquire, hold, or dispose of real and personal property, including a ferry boat, its equipment and related docking facilities.

h. Incur debts, liabilities, and obligations.

i. Invest in the County treasury monies not needed for immediate necessities as the Board of Directors deems advisable; provided that, such investment shall be on the same terms and conditions as other local entities' investments in accordance with Government Code Section 53601.

j. Adopt a conflict of interest code, if required by law.

k. Do all other reasonable and necessary acts to fulfill the purposes of this agreement.

7. Restriction on Power. The manner of exercising powers granted Authority by this agreement shall be subject to the same restrictions as imposed upon Districts in their exercise of similar powers.

8. The President shall cause the filing of a notice of this agreement to be made with the Office of the Secretary of State, within thirty (30) days after its effective date, pursuant to Government Code §6503.5.

9. Financial.

a. Fiscal Year. The fiscal year for Authority shall be from July 1st to June 30th.

b. Depository. The treasurer of County is designated as the depository for Authority to have custody of all funds of Authority from whatever source, except for authorized revolving funds for operational purposes. As depository, the treasurer shall:

(1) Receive and receipt for all money of Authority and place it in the treasury to the credit of Authority except money directly contributed to an authorized revolving fund.

(2) Be responsible on his/her official bond for the safekeeping and disbursement of all money of Authority so held by the treasurer;

(3) Pay from Authority money any other sums due from Authority or any portion thereof, only upon requisition executed by two members of the Board.

(4) Verify and report in writing on the first day of July, October, January, and April of each year to Authority and to member jurisdictions the amount of money held for Authority, the amount of receipts since the last report, and the amounts paid out since the last report.

10. Audit. There shall be strict accountability of all Authority funds.

11. Auditor. The auditor of County shall be the auditor for Authority. The auditor shall:

a. Report all receipts and disbursements to Authority;

b. Make or contract to make an annual audit of Authority pursuant to requirements of Government Code Section 6505.

12. Debts and Liabilities. The debts, liabilities, and obligations of Authority shall not be the debts, liabilities, and obligations of the party jurisdictions (Reclamation Districts), or any of them.

13. Contributions By Party Jurisdictions. The party jurisdictions shall make the fund and/or service contributions to the Authority as from time to time agreed upon between the parties.

14. Ferry Operations. 2026 and 2059 (or either of them as is indicated in writing to the Authority by them) during the term of, and subject to this agreement agree (subject to fund [cost, etc.] limitations and provisions of Authority "approved budget[s]"):

a. Vessel. To operate said ferry to serve the needs of the landowners, residents, and other general public users by the provision of ferry service as shown on attached Exhibit "A". To conduct said operation in accordance with the applicable U. S. Coast Guard requirements.

b. Payment. To accept payment from the Authority (as appropriate between them) annually during each fiscal year for their incurred ferry operations expenses as permitted by the Authority's "approved budget" for that fiscal year for such operation expenses.

c. Operator. To provide a trained and qualified ferry operator or operators meeting all requirements which now or

may in the future be mandated by any regulatory agency, including but not limited to the U. S. Coast Guard.

d. Repairs. To repair any and all damage to the ferry, slips, ramps or barricades which may result from any grossly negligent act of 2026 and/or 2059's operators of said ferry.

e. Worker's Compensation Insurance. To purchase and maintain appropriate Worker's Compensation Insurance covering all individuals who at any time operate the ferry.

f. Schedule. To be responsible for the operating schedule for the ferry. Ferry services will be made available for all users, including members of the general public, during the operating hours as established by 2026 and 2059 which hours shall be posted at the ferry slips and ramps. Copies of the most current ferry service schedules shall be provided in a timely manner to the Contra Costa County Administrator.

g. Tolls and Charges. If 2026 and 2059 recommend the establishment of charges and tolls (and their specific amounts) and the Authority approves their recommendation, they shall collect said charges and tolls from users. Any tolls and charges collected shall be credited to "Operations Expense" and shall be reasonable, equitable and uniformly applied.

h. Exclusive Use. To use the ferry "Victory II" only for the purpose of providing public ferry service as provided herein and for no other use without first obtaining the Authority's written approval for such other use.

i. Discrimination. In the operation and use of said ferry, 2026 and 2059 shall neither discriminate nor permit discrimination against any person or group of persons on the grounds of race, color, national origin, or in any other manner prohibited by law.

j. Funds, Audit, and Accounting.

(1) To keep true, full and accurate books of account and records of all operations expenses and any charges, fees and rentals collected and disbursements thereof in connection with this agreement and all business made, done or transacted in, upon or as part of the ferry service. These records will be kept at all times during the term of this agreement.

(2) That Authority, or its authorized representatives or agents, shall have the right to examine and inspect 2026 and 2059 books and records at any

reasonable time, upon request, relative to said ferry service.

(3) To deliver to the Authority, upon its request, an annual report of its activities hereunder.

(4) To forward to the Authority, any charges, fees, and rentals collected in connection with this agreement.

15. Budget; Procedure, Approval. At least 60 days prior to the first day of each Authority fiscal year specified in Section 9.a., the Board shall (1) prepare a proposed annual budget for that fiscal year which sets forth the contributions to be made by each party jurisdiction and (2) provide that proposed annual budget to each party jurisdiction for its review, possible revision, and approval. After approval of the same proposed annual budget by the party jurisdictions, the Board shall adopt it as the Authority's "approved budget" for the fiscal year. Should the party jurisdictions (or any one of them) not approve the same proposed annual budget, such failure to act shall constitute a written notice of termination pursuant to Section 16b which shall be effective upon the expiration of the said 60 day period provided in this section.

16. Term and Termination.

a. Term. This agreement shall become effective on the date specified in Section 1. and continue in force until terminated by action of either party.

b. Termination. This agreement may be terminated at any time during its term by a party jurisdiction first giving 60 days prior written notice of such termination to authority and other party jurisdictions.

17. Disposition of Money and Property. Upon termination of this agreement, all property, equipment and surplus funds of Authority shall be distributed by the Authority's Auditor to and among the party jurisdictions in proportion to the contributions made.

a. Dispute. If party jurisdictions cannot agree upon their distributive shares, the disagreement shall be referred to a panel of three referees for decision. One referee shall be appointed by the members disputing the disposition. One referee shall be appointed by the members supporting the distribution. One referee shall be appointed by the two referees first appointed.

b. Rights. Except as provided above in this Section, party jurisdictions shall have no right to distribution of acquired property or surplus funds of Authority.

18. Insurance.

a. Worker's Compensation. Each party jurisdiction, during the term of this agreement, shall maintain appropriate worker's compensation insurance adequate to protect itself while discharging its duties pursuant to this agreement.

b. Throughout the term of this agreement (to fully cover activities hereunder), Authority shall maintain in effect minimum policies of comprehensive public liability insurance providing limits of not less than \$500,000 each person, \$500,000 for property damage, and \$2,500,000 each occurrence for bodily injury, and property damage. Said policies shall include Contra Costa County and Reclamation District Nos. 2026 (Webb) and 2059 (Bradford) and all of their governing boards, officers and employees as additional named insureds. Said policies shall provide that they will not be cancelled or reduced in coverage without thirty (30) days prior written notice mailed to Contra Costa County and Reclamation District Nos. 2026 and 2059 pursuant to Section 21. Authority will furnish the County, Webb and Bradford with certificates evidencing said policies and all endorsements or changes thereof.

Should Authority secure and maintain appropriate insurance coverage against damage to the ferry or its hull, it shall secure and provide 2026 and 2059 with appropriate waivers of subrogation pertaining to the same.

19. Amendment. This agreement may be amended upon the unanimous approval of all party jurisdictions.

20. Successors. This agreement shall be binding upon and inure to the benefit of any successors or assigns of the party jurisdictions. No party shall assign this agreement or any interest therein without first obtaining the written consent of the other parties.

21. Notices. Any and all notices desired or required pursuant to this agreement shall be delivered to:

a. Reclamation District 2026
P. O. Box 1461
Stockton, California 95201

b. Reclamation District 2059
P. O. Box 129
Antioch, California 94509

22. Mutual Release. Should performance by Authority or 2026 and 2059 pursuant to this agreement be temporarily or permanently terminated for any reason beyond the reasonable control of either party, 2026 and 2059 hereby agree to

release the other party hereto from liability for any damage or loss which may be suffered as a result of said interruption of service.

23. Severability. Should any part, term, portion, or provision of this agreement be finally decided to be in conflict with any law of the United States or of the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions of this agreement shall be deemed severable and shall not be affected thereby, provided that, such remaining parts, terms, portions, or provisions can be construed in substance to constitute the agreement that the party jurisdictions intended to enter into in the first instance.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their duly authorized officers and representatives as of the dates indicated.

Dated: 09-30-87

Executed 12-17-88

RECLAMATION DISTRICT NO. 2026

By: *David S. Smith*
Chairperson, Board of
Trustees

ATTEST: Secretary, Board of
Trustees

Executed 12-16-88

By: *[Signature]*

Dated: January 3, 1989

RECLAMATION DISTRICT NO. 2059

By: *S. K. Gilbert*
Chairperson, Board of
Trustees

ATTEST: Secretary, Board of
Trustees

By: *[Signature]*