

Coordinated Operations Agreement for Freeport Regional Water Authority Intake Facilities and City of Sacramento Sump 28 Storm Water Pump Station

This Coordinated Operations Agreement ("Agreement"), dated for purposes of identification OCT. 3, 2006 ("Agreement Date") is made by and between the Freeport Regional Water Authority ("FRWA"), a joint powers authority formed under a Joint Powers Agreement between the Sacramento County Water Agency ("SCWA") and the East Bay Municipal Utility District ("EBMUD"), and the City of Sacramento ("City"), a charter city.

RECITALS

- A. FRWA is a joint powers authority that has been established to implement, construct, and operate the Freeport Regional Water Project including construction of a new water diversion facility on the Sacramento River ("FRWA Intake") and pipeline alignments that traverse the City and the County's jurisdiction between the Sacramento River and the Folsom South Canal.
- B. The member agencies of FRWA are EBMUD and the SCWA.
- C. The City is an associate member of FRWA pursuant to Section 2.2 of the joint powers agreement that formed FRWA.
- D. The City, EBMUD, SCWA and FRWA are all engaged in essential public utility functions.
- E. The Sacramento River is occasionally subject to low flow rates and reverse flows in the vicinity of the Freeport Bend, the location of the FRWA Intake.
- F. The City of Sacramento's Sump 28 Storm Water Pump Station ("Sump 28") discharges storm water and other runoff ("urban storm water runoff") from the South Sacramento Drainage Canal and its tributaries into the Sacramento River downstream of the FRWA Intake location.
- G. Studies conducted by FRWA have determined that when river flows are below approximately 1,000 cubic feet per second ("cfs"), as measured at the Freeport Bridge, the potential exists for discharges from Sump 28 to be drawn into the FRWA Intake. Periods of time when flows are below 1,000 cfs as measured at the Freeport Bridge are hereinafter referred to as "low-flow events".
- H. The FRWA Intake is a municipal and industrial water supply intake.

CITY
AGREEMENT NO. 2006-1065

CITY
AGREEMENT NO. 2006-1065

- I. The discharge of urban storm water runoff from Sump 28 may include contaminants that are undesirable in a municipal and industrial water supply.
- J. In Article 2 of the "Sales and Purchase Agreement Between the Freeport Regional Water Authority, the City of Sacramento, the East Bay Municipal Utility District, and the Sacramento County Water Agency," dated October 13, 2005 and identified as City Agreement No. 2005-0147A (the "Sales and Purchase Agreement"), FRWA, EBMUD and SCWA, among other things: (1) acknowledged the existence, circumstances and characteristics of the City's discharges of urban storm water runoff and combined system flows at various locations above and below the FRWA Intake, including discharges of urban storm water runoff from Sump 28; (2) released any and all claims that may arise against the City for costs or other liability incurred by FRWA, EBMUD or SCWA to comply with FRWA Intake operational requirements related to City discharges made in compliance with the City's regulatory permits from any of these locations; and (3) agreed to indemnify City against any claims, costs, damages or other liability arising from any water quality impact or injury to FRWA, EBMUD, SCWA or their customers related to the impact of City discharges that are made in compliance with the City's regulatory permits on the quality of surface water that is diverted by FRWA at the FRWA Intake location.
- K. The parties hereto have agreed that the best means to prevent diversion of Sump 28 discharge into the FRWA Intake is the establishment of appropriate operating procedures intended to prevent any such diversion, provided that such procedures shall not affect and shall remain subordinate to any applicable provisions of Article 2 of the Sales and Purchase Agreement.
- L. The Sacramento Regional County Sanitation District ("SRCSD") operates a Doppler velocity meter at the Freeport Bridge ("SRCSD Flowmeter") for purposes of measuring river flow and detecting reverse flows.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained herein, the parties hereto agree to the following:

**ARTICLE 1
COORDINATED OPERATIONS**

- 1.1 The operations of the FRWA Intake and Sump 28 will be coordinated according to the provisions of EXHIBIT A – COORDINATED OPERATIONS.
- 1.2 The provisions of EXHIBIT A – COORDINATED OPERATIONS may be modified in writing by the mutual consent of the Freeport Regional Water

CITY
AGREEMENT NO. 2006-1065

Authority General Manager and the City of Sacramento Department of Utilities Director.

**ARTICLE 2
GENERAL CONDITIONS**

- 2.1 Except as provided in Article 3.1 of this Agreement, neither party to this Agreement shall be liable to the other party for any loss or damage in connection with this Agreement, except that each party shall be responsible for the consequences of its own willful misconduct in connection with this Agreement, or in connection with any work undertaken in accordance with this Agreement, and shall indemnify, defend and hold harmless the other party from the consequences thereof to the extent allowed by law.
- 2.2 Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO AUTHORITY

General Manager
Freeport Regional Water Authority
2710 Gateway Oaks Drive, Suite
#320-South
Sacramento, CA 95833

TO CITY

Director of Utilities
City of Sacramento
1395 35th Avenue
Sacramento, CA 95822

Personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service. Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

- 2.3 Except as provided in Article 3.1 of this Agreement, this Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 2.4 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and neither party shall assign, transfer or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of the other.
- 2.5 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force

CITY
AGREEMENT NO. _____

and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.

- 2.6 This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which together shall constitute a single document.
- 2.7 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 2.8 Any party's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. Any party's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
- 2.9 This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.
- 2.10 This Agreement is not intended to, and will not be interpreted as conferring, any benefit or right whatsoever upon any person or entity that is not a party hereto.

**ARTICLE 3
SALES AND PURCHASE AGREEMENT**

- 3.1 This Agreement shall not modify or otherwise affect the Sales and Purchase Agreement, which shall remain in full force and effect, and in the event of any conflict or inconsistency between any term of provision of this Agreement and any term or provision of the Sales and Purchase Agreement, the Sales and Purchase Agreement shall govern.

CITY
AGREEMENT NO. 2006-1065

**CITY OF SACRAMENTO, a
charter city**

Dated: _____

By: Marty Hanneman

Marty Hanneman, Assistant City Manager
For: Ray Kerridge, City Manager
October 5, 2006

ATTEST:

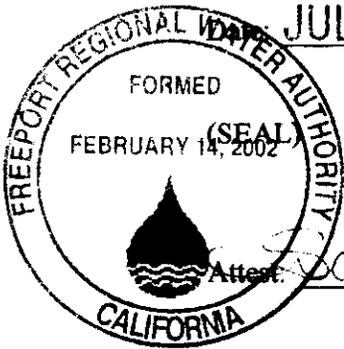
S. Miyuno 10.10.06
Asst. City Clerk

APPROVED AS TO FORM:

Joe Nor
City Attorney

**FREEPORT REGIONAL
WATER AUTHORITY, a joint
powers authority**

By: Don Nottoli
Chair, Board of Directors



JUL 13 2006

Attest: Sandra Burnett
Secretary of the Board

Approved As To Form:

General Counsel

CITY
AGREEMENT NO. 2006-1065

CITY
AGREEMENT NO. 2006-1065

RESOLUTION AUTHORIZING CHAIR OF THE BOARD OF DIRECTORS TO EXECUTE COORDINATED OPERATIONS AGREEMENT FOR FREEPORT REGIONAL WATER AUTHORITY INTAKE FACILITIES AND CITY OF SACRAMENTO SUMP 28 STORM WATER PUMP STATION

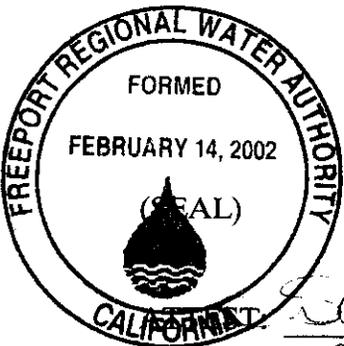
BE IT RESOLVED AND ORDERED that the Chair of the Board of Directors be and is hereby authorized and directed to execute *Coordinated Operations Agreement for Freeport Regional Water Authority Intake Facilities and City of Sacramento Sump 28 Storm Water Pump Station*, in the form attached, on behalf of the FREEPORT REGIONAL WATER AUTHORITY, a joint powers authority, with the *City of Sacramento*, and to do and perform everything necessary to carry out the purpose of this Resolution.

ON A MOTION by Director Coleman, and seconded by Director Foulkes, the foregoing resolution was passed and adopted by the Board of Directors of the Freeport Regional Water Authority, State of California, this 13th day of July, 2006, by the following vote, to wit:

- AYES: Directors, Coleman, Foulkes, Nottoli
- NOES: Directors, None
- ABSENT: Directors, Collin
- ABSTAIN: Directors, None

CITY AGREEMENT NO. 2006-1065

Don Nottoli
Chair of the Board of Directors of the Freeport Regional Water Authority



Sandra Burnett
Secretary, Board of Directors

In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman on **JUL 14 2006**

Gueryne Dewlenia
Deputy Clerk, Board of Directors

The foregoing is a correct copy of a resolution adopted by the Board of Directors, Sacramento County, California

On July 13, 2006

Dated July 19, 2006
Clerk of Said Board of Directors

By Gueryne Dewlenia
Deputy Clerk

FILED

JUL 13 2006

BOARD OF DIRECTORS
Sandra Burnett
Clerk of the Board

RESOLUTION NO. 2006-712

Adopted by the Sacramento City Council

October 3, 2006

SUMP 28 COORDINATED OPERATING AGREEMENT

BACKGROUND

- A. The Freeport Regional Water Authority (FRWA), will be constructing a water intake facility at the site of a decommissioned wastewater treatment plant, adjacent to the Sacramento River, Sump 28, and the Freeport Reservoir.
- B. Staff from City and the FRWA jointly developed an agreement that minimizes the potential of FRWA diverting urban runoff in the intake structure. The Agreement provides for the City to postpone or suspend discharges through Sump 28 when river flows are less than 1,000 cfs. If the City is unable to postpone or suspend flows, due to high water level in the Canal or forecasted rain, than the Intake will be shut down. When river flows exceed 1,000 cfs, both Sump 28 and the Intake will operate normally.
- C. The Agreement recognizes flood control and safety as the highest priority, while adequately protecting water quality at the FRWA Intake.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Director of Utilities is authorized to execute an agreement for the coordinated operation of Sump 28 and the Freeport Regional Water Project Intake Diversion.

TABLE OF CONTENTS:

Exhibit A: Coordinated Operations Agreement

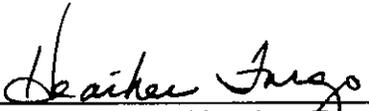
Adopted by the City of Sacramento City Council on October 3, 2006 by the following vote:

Ayes: Councilmembers, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: Councilmember Cohn.



Mayor, Heather Fargo

Attest:


Shirley Concolino, City Clerk