

AGREEMENT
FOR FUNDING & OPERATION OF
DISSOLVED OXYGEN AERATION FACILITY

This Agreement is entered into by and between the Port of Stockton, a California Port District with municipal powers organized pursuant to Harbors and Navigations Code section 6200 *et seq.*; the San Joaquin River Group Authority, the San Luis & Delta-Mendota Water Authority, San Joaquin Valley Drainage Authority and the State Water Contractors, each of which may be referred to herein individually as a “Party” or jointly as the “Parties.” The Department of Water Resources (DWR) also enters into this Agreement, not as a “Party”, but as a signatory for the purpose of making arrangements for payment of the (cost) share of the Annual Commitment as described in Section 3.4 herein for the State Water Contractors. DWR shall have no obligations and makes no representations hereunder except to make such payments.

RECITALS

- A. The California Water Quality Control Board, Region 5, Central Valley Region (the “Regional Board”) has heretofore adopted a Basin Plan Amendment setting forth its San Joaquin River Dissolved Oxygen (“DO”) Control Program, establishing water quality objectives for dissolved oxygen levels in the Stockton Deep Water Ship Channel (the “SDWSC”), and adopting a DO Total Maximum Daily Load (DO TMDL) for meeting the water quality objectives.
- B. The Parties previously agreed to fund and/or implement alternate measures to help address non-load related factors as part of the continuing work on the San Joaquin River DO Control Program.
- C. The Regional Board, by letter dated May 9, 2011, has advised the Parties that the Regional Board supports continued use of aeration technology and facilities that have been developed, permitted and installed on the Port of Stockton’s West End Complex and tested through a two-year demonstration project (the “SDWSC Aeration Facilities”) as an alternate measure to maintain DO concentrations in the SDWSC in compliance with the Basin Plan.
- D. The Parties believe that a sound, justifiable and sustainable DO Control Program requires 1) further refinement of the DO TMDL through the development of additional information; 2) updating the DO TMDL to address changes in load inputs to the San Joaquin River; 3) taking into consideration changing San Joaquin River flows; 4) completion of the downstream studies as called for in the DO TMDL; 5) development of averaging periods for the DO objective; and 6) reexamination of the water quality objectives based on present day science.

- E. The Parties further believe allocating responsibility to meet load and non-load factors in the current DO TMDL is not justified or adequate.
- F. The Parties nonetheless desire to cooperate with the Regional Board and to assist in meeting requirements of the existing DO TMDL.
- G. By this Agreement the Parties intend to set forth their mutual understandings and commitments to fund operation and maintenance of the SDWSC Aeration Facilities on an interim basis for the purposes of 1) maintaining or increasing DO concentrations in the SDWSC in an effort to help meet the dissolved oxygen water quality objectives established by the Regional Board for the SDWSC; and 2) providing a stable regulatory environment while the Regional Board develops additional information and refines the San Joaquin River DO Control Program.

NOW, THEREFORE, the Parties, on the terms and conditions set forth herein, agree as follows:

AGREEMENT

Section 1. Purposes. The Parties are executing this Agreement to fund operation and maintenance of the SDWSC Aeration Facilities for the purposes of 1) maintaining or increasing DO concentrations in the SDWSC in an effort to help meet the dissolved oxygen water quality objectives established by the Regional Board for the SDWSC, and 2) providing a stable regulatory environment while the Regional Board develops additional information and refines the San Joaquin River DO Control Program. The Parties further agree that, in order to facilitate coordination of information for the purposes of this Agreement, the funding provided herein shall also be available to fund the San Joaquin River Dissolved Oxygen Technical Working Group website at <http://sjrdotmdl.org/>.

Section 2. Term. The Initial Term of this Agreement shall be from June 1, 2011 through May 31, 2014. For purposes of this Agreement, the term "Year" shall mean the twelve-month period commencing on June 1st and ending on the following May 31st. The Parties may thereafter extend this Agreement by implied mutual consent on the same terms and conditions for up to two additional one-year renewal periods, through May 31, 2016 (Extended Term/s"), as follows: Each such one-Year Extended Term shall automatically take effect unless any Party provides written notice to all of the other Parties not later than the March 1st immediately prior to the end of the then-current Initial or Extended Term Year of the Party's intent not to renew its participation in the Agreement on the following June 1st.

Section 3. Operation of SDWSC Aeration Facilities. The Parties will provide funding for operation and maintenance of the SDWSC Aeration Facilities on the basis described in this Section.

3.1 Funding Commitment.

a. The Parties will pay to the Port of Stockton up to \$600,000 over the Term to operate and maintain the SDWSC Aeration Facilities, which payment will include purchase of

oxygen (“Aeration Facilities O&M”). Subject to reduction as provided in Section 3.4, the Parties agree to pay a total amount each Year of \$200,000 (the “Annual Commitment”). If in any Year the cost for Aeration Facilities O&M is less than \$200,000, the unspent money shall be retained by the Port of Stockton and will be available for Aeration Facilities O&M in a subsequent Year pursuant to Section 3.4 and subject to Section 3.1(b).

b. Should any Party exercise its right to not participate in any Extended Term pursuant to Section 2, the terminating Party will not be entitled to the return of any money paid during the Initial Term or a previous Extended Term except as stated in 3.1(c) of this agreement. A party that does not participate in any Extended Term pursuant to Section 2 will not be obligated to pay any money for any Year following notice of termination.

c. At the termination of this Agreement, the Port of Stockton will refund to the Parties money paid under Section 3.1(a) that has not been expended based on their respective Allocation of Funding Commitments described in Section 3.2 and subject to Section 3.1b.

3.2 Allocation of Funding Commitment. The Parties each agree to pay the following amounts toward Aeration Facilities O&M:

Port of Stockton	33.33% of the Annual Commitment
San Joaquin River Group	25.00% of the Annual Commitment
San Luis & Delta-Mendota Water Authority & San Joaquin Valley Drainage Authority	25.00% of the Annual Commitment
State Water Contractors	16.67% of the Annual Commitment

3.3 Aeration Facilities O&M. The Parties agree that the Port of Stockton shall perform the Aeration Facilities O&M under separate agreement between the Port of Stockton and the DWR as the owner of the Facilities. When DWR transfers title to the SCWSC Aeration Facilities to the Port of Stockton, the Port of Stockton hereby agrees that the primary purpose for use of the Facilities shall be meeting the Regional Board’s water quality objective for dissolved oxygen in the SDWSC throughout the life of the Facilities. In such case, the Port of Stockton at the Port’s sole expense, will have the right to utilize the SDWSC Aeration Facilities for the secondary purpose of meeting permit obligations of the Port or of the US Army Corps of Engineers, provided that use for such secondary purpose shall not prevent the-use of the SDWSC Aeration Facilities to the extent needed to meet dissolved oxygen water quality objective obligations assigned by the Regional Board to the Parties.

3.4 Payment to Port of Stockton. Each Party will pay to the Port of Stockton its respective share of the Annual Commitment for 2011 as specified herein and thereafter on or before August 1st of the Year (“Annual Payment Due Date”), beginning August 1, 2012. The Port of Stockton agrees to hold such money in an interest-bearing segregated account dedicated and maintained solely for purposes of funding Aeration Facilities O&M, to be opened as soon as possible following the Effective Date. The Port agrees to notify the Parties and DWR when the

account has been opened, and payment from the Port, the San Joaquin River Group Authority, the San Luis & Delta-Mendota Water Authority, and the San Joaquin Valley Drainage Authority shall be forwarded for deposit within two weeks following such notice. 2011 funding from the State Water Contractors shall be made by the DWR upon such schedule as may be agreed to by the Port and DWR.

a. When the Port of Stockton successfully negotiates with DWR a transfer agreement for the SDWSC Aeration Facilities, the Port agrees to perform Aeration Facilities O&M, and to pay the costs thereof utilizing the funds collected for the Annual Commitments.

b. Prior to July 15 of the each Year, beginning July 15, 2012, the Port of Stockton will provide an accounting to each of the remaining Parties as of the end of the preceding Year. The accounting will include the actual Aeration Facilities O&M costs, the funds applied, and the balance of funds remaining at the end of such Year.

Section 4. Conditions for Extended Terms. In considering whether or not to extend the Agreement beyond the Initial Term, the Parties will take into account whether or not the Regional Board has made substantial progress in refining its DO Control Program, including the TMDL and water quality objective for the SDWSC. Factors of special interest to the Parties include those set forth in this Section.

4.1 New Data and Studies. Updated information on DO conditions in the SDWSC since adoption of the TMDL, including but not limited to, a) data from dissolved oxygen monitoring. b) information about any changes in flow quantity or patterns, such as from implementation of the San Joaquin River Restoration Project or of any other regulations increasing flows into the SDWSC; c) information from changes in load inputs to the San Joaquin River of algae, or nutrients or other substances that may affect dissolved oxygen and d) information developed through completion of the downstream studies or other scientific information.

4.2 Refinement of Criteria. Information on the development of new or revised criteria for determining whether or not the dissolved oxygen TMDL is being met, such as allowance of averaging periods and reliance upon readings at an agreed-upon monitoring station, rather than instantaneous measurement or consideration of measurements taken anywhere in the SDWSC.

4.3 Reconsideration of the Fall Objective. Information on revising the current dissolved oxygen objective for the September-November period.

The progress may be demonstrated, for example, by a Regional Board Staff Report presented to the Regional Board prior to the end of the Initial Term with an update prior to the end of each Extended Term.

Section 5. Agreement Not Admission of Responsibility. The Parties assert that the Regional Board's allocation of responsibility to meet load and non-load factors in the current DO TMDL is not justified or based upon adequate information and dispute that they are legally

obligated for the Regional Board's stated allocation of responsibility under its DO Control Program. The Parties enter into this Agreement as an interim measure to further test the feasibility of using the SDWSC Aeration Facilities as an alternate, non-load-reducing mechanism to resolve SDWSC DO problems in cooperation with the Regional Board and to induce the Regional Board to consider refinements to its DO Control Program. Nothing in this Agreement reflects or should be interpreted to reflect an admission by any Party of responsibility for implementation of the DO TMDL or any other regulation, nor does it impair or prevent any Party from affirmatively asserting any right or making any claim against the Regional Board. In the event the Regional Board seeks to take any enforcement action against the Parties or any Party, each Party hereby specifically reserves all rights and defenses it may have to resist any such Regional Board enforcement action for DO water quality violations during the Initial Term and any Extension Term.

Section 6. Additional Parties. The Parties assert there are other persons or entities that have a responsibility to join in efforts to improve DO in the SDWSC. The Parties urge the Regional Board to encourage those persons or entities to join in this effort. This Agreement may be amended at any time to admit such additional parties, in which case the Parties agree to execute an appropriate amendment that assigns an Annual Payment Allocation to any such additional party and adjusts on a prorated basis their respective Annual Payment Allocations.

Section 7. Effective Date. This Agreement shall become effective and be retroactive to the first date of the Initial Term upon the date the last of the Parties listed below execute the Agreement; provided, in the event the Regional Board does not accept this Agreement as satisfying the 2004 commitment to fund the SDWSC Aeration Facilities described in its May 9, 2011, letter, this Agreement shall be void and have no effect, unless the Parties agree to enter into revisions or amendments to this Agreement to incorporate terms that allow the Regional Board to accept this Agreement as satisfying the 2004 commitment described in its May 9, 2011, letter to fund the SDWSC Aeration Facilities.

Section 8. Miscellaneous.

8.1 Amendment. This Agreement can be amended only by a written instrument executed by the Parties.

8.2 Integration. This Agreement contains the entire understanding of the Parties related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

8.3 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the assigns or successors in-interest of the Parties herein.

8.4 Headings. The titles of the paragraphs of this Agreement are for convenience only, and no presumption or implication of the intent of the parties as to the construction of this Agreement shall be drawn there from.

8.5 Execution in Counterpart. This Agreement may be executed in any number of counterparts which collectively shall constitute the full agreement of the Parties.

8.6 Authority to Execute. Each person executing this Agreement represents and warrants that he or she is authorized to execute the Agreement on behalf of the Party and that the Party is legally bound by the Agreement.

IN WITNESS WHEREOF, the undersigned hereto have executed this agreement effective as of the date set forth herein.

Port of Stockton

By: *Richard Rubino*

Dated: *May 16, 2012*

San Joaquin River Group Authority

By: _____

Dated: _____

San Luis & Delta-Mendota Water Authority

By: *D. L.*

Dated: *4/19/12*

San Joaquin Valley Drainage Authority

By: _____

Dated: _____

[Signatures continue on following page.]

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IN WITNESS WHEREOF, the undersigned hereto have executed this agreement effective as of the date set forth herein.

Port of Stockton

By: _____

Dated: _____

San Joaquin River Group Authority

By: Allen Short, Executive Director
On Behalf of San Joaquin Tributaries Authority, Successor in Interest

Dated: 5-7-12

San Luis & Delta-Mendota Water Authority

By: _____

Dated: _____

San Joaquin Valley Drainage Authority

By: _____

Dated: _____

[Signatures continue on following page.]

State Water Contractors

By: TEO

Dated: 14 May 2012

Department of Water Resources

By: _____

Dated: _____

State Water Contractors

By: _____

Dated: _____

Department of Water Resources

By: *Kathleen Kelly*

Dated: *04/10/12*

ASSIGNMENT OF CONTRACT

For value received, San Joaquin River Group Authority (Assignor) hereby assigns all of Assignor's right, title, and interest in and to the contract effective on May 9, 2011, by and between Assignor and the Port of Stockton, the San Luis & Delta-Mendota Water Authority, San Joaquin Valley Drainage Authority, the State Water Contractors, and the California Department of Water Resources (Contract), to the San Joaquin Tributaries Authority (Assignee). The subject matter of the Contract is an Agreement for Funding and Operation of Dissolved Oxygen Aeration Facility.

By this Assignment, Assignor delegates to Assignee all of Assignor's duties and obligations of performance of the Contract. By accepting this Assignment, Assignee agrees to assume and perform all duties and obligations that Assignor has under the Contract, as if Assignee had been an original party to the Contract.

This Assignment shall be binding on and shall inure to the benefit of the respective successors and assigns of the parties to this Assignment.

This Assignment shall be governed by and construed in accordance with California law.

Executed May 7, 2012, at Modesto, California.

ASSIGNOR


San Joaquin River Group Authority