Report to the Auburn City Council

Action Item

Agenda Item No. 8

City Manager's Approval

To:	Mayor and City Council Members
	Michael G. Colantuono, City Attorney
From:	Michael R. Cobden, Assistant City Attorney
Date:	February 24, 2014
Subject:	Participation Agreements for Regional Sewer Project

The Issue

Shall the City of Auburn authorize staff to propose agreements to govern the City's participation in a regional sewer project with the City of Lincoln and Placer County?

Conclusions and Recommendation

Staff recommends that the City Council direct the City Attorney to submit to the Lincoln City Attorney and Placer County Counsel the attached participation agreements, setting forth the rights and responsibilities of the City of Auburn, the City of Lincoln, and Placer County with respect to Auburn's participation in the regional sewer project and to initiate negotiations of final agreements for approval by both Cities and the County.

Background

The Council approved Auburn's participation in the regional sewer project November 16, 2013. At that time, Auburn reached a two-party agreement with Placer County to partially fund construction of the regional pipeline, and to reserve capacity for Auburn's eventual connection. However, because the construction bid award was imminent and no further Lincoln City Council meetings were schedule for the year, there was no opportunity to address Lincoln's obligations to Auburn, or the terms of Auburn's connection to Lincoln's Wastewater Treatment Facilities. Although there was no formal agreement in place, Lincoln and Placer County officials assured the Council that the remaining issues would all be addressed in a separate agreement early this year. Placer County has recently expressed a preference for two two-party agreements, drafts of which we attach to this report. We provided advance copies of these drafts and this staff report to Placer County Counsel and to the Lincoln City Attorney on February 17, 2014 for preliminary comments and will report any comments we receive at or before your February 24, 2014 meeting.

Alternatives Available to Council; Implications of Alternatives

1. Authorize staff to send the attached draft Participation Agreements to Lincoln City Attorney and Placer County Counsel for consideration.
2. Direct staff to amend the draft Agreements.
3. Take no action.

Fiscal Impact

The attached agreements were prepared by the City Attorney's office using budgeted resources. As City staff previously reported, the cost for Auburn's participation in the regional sewer project will require a sewer rate increase, the precise amount of which is now under study.

Attachments:

Regional Sewer Participation Agreement between the City of Auburn and Placer County
Sewer Participation Agreement between the City of Auburn and the City of Lincoln
Agenda Materials from Auburn City Council Special Meeting of November 16, 2013.

MID-WESTERN PLACER REGIONAL SEWER PROJECT

PARTICIPATION AGREEMENT

BETWEEN PLACER COUNTY AND AUBURN

THIS AGREEMENT RELATING TO THE MID-WESTERN PLACER REGIONAL SEWER PROJECT ("Agreement") is made as of the ___ day of _____, 2014, by and among the COUNTY OF PLACER, a political subdivision of the State of California ("County"), and the CITY OF AUBURN, a general law city duly organized and existing under the laws of the State of California ("Auburn"). The County and Auburn are collectively referenced in this Agreement as the "Parties" and each of them, as a "Party."

RECITALS

A. WHEREAS, the County and Auburn wish to work cooperatively to plan, design, permit, finance, construct and operate regional wastewater collection, and conveyance facilities to serve the Greater Auburn Area; and

B. WHEREAS, County and Auburn have determined that a regional wastewater project consisting generally of pumping facilities located at the County's existing Sewer Maintenance District 1 site on Joeger Road in North Auburn ("SMD 1 Site"), a conveyance pipeline connecting to the existing City of Lincoln Wastewater Treatment and Recycling Facility on Fiddyment Road in Lincoln (the "Lincoln WWTRF"), and certain improvements to the Lincoln WWTRF, as more fully described in the "Project Description" dated October 6, 2013 attached as Exhibit A (collectively the "Mid-Western Placer Regional Sewer Project" or "Project"), is in the Public Interest; and

C. WHEREAS, on March 13, 2012, the Placer County Board of Supervisors gave direction to County staff to move forward with the Project with Lincoln while keeping open the option for Auburn to Participate in the Project; and

D. WHEREAS, on October 8, 2013 the County Board of Supervisors approved the Construction, Operations and Joint Exercise of Powers Agreement (COJA) between the County and Lincoln to construct the Project, a copy of which is attached to this Agreement as Exhibit B; and,

E. WHEREAS, the COJA acknowledges in Section 3.3 that Auburn may desire at some date to participate in the Project; and

F. WHEREAS, all appropriate and necessary environmental review documents and procedures for the Project have been completed or included in other environmental review documents under the California Environmental Quality Act ("CEQA"); and

G. WHEREAS, Auburn and the County have negotiated a Funding Agreement to govern Auburn's financial contribution to the Project, executed on November 16, 2013, a copy of which is attached to this Agreement as Exhibit C; and

H. WHEREAS, Auburn and Lincoln have separately negotiated a Participation Agreement to address Auburn's connection to, and use of, Lincoln's WWTRF; and

I. WHEREAS, the Funding Agreement does not address how Auburn will participate in the Project, although such participation is contemplated by the COJA, and the County and Auburn wish to set forth their respective terms and conditions for Auburn's participation in the Project in this Agreement.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. **Definitions**. This Agreement incorporates by reference Section 1.1 of the COJA ("Defined Terms"). In addition, the following words and phrases used in this Agreement shall have these meanings unless the context plainly indicates another meaning was intended:

   Auburn means the City of Auburn, a general law city duly organized and existing under the laws of the State of California.

   Construction Operations and Joint Exercise of Powers Agreement ("COJA") means the Agreement between the County of Placer and City of Lincoln for construction and operation of the Regional Sewer system, executed October 16, 2013.

County-Auburn Joint Regional Sewer means the Junction Structure, Joint Export Sewer, and Energy Dissipation Structure and ancillary facilities that would provide for up to 5.2 MGD in reserved capacity for Auburn more fully described in Exhibit A to this Agreement.

Lincoln-County Project refers to the portion of the Regional Facilities described in Exhibit 1 to the COJA.

Lincoln WWTRF is the Waste Water Treatment and Reclamation Facility, including the system of pipes conveying wastewater from the County SMD 1 Wastewater Treatment Plant and County-Auburn Joint Regional Sewer to the treatment plant operated by Lincoln.

Peak Flow is the maximum estimated wastewater flow during wet weather periods being directed into the Regional Facilities from Auburn. Peak flow includes sanitary flows from the ultimate build-out of Auburn's service area (2.5 MGD) as well as groundwater infiltration and rainwater inflow (2.7 MGD) for a total peak flow of 5.2 MGD.

Regional Facilities (also referred to as "Project") includes the total Mid-Western Placer Regional Sewer Project facilities, connecting the Auburn sewer facilities, County SMD 1 Wastewater Treatment Plant, and the Lincoln Wastewater Treatment and Reclamation Facility.

Sanitary Flow is the wastewater from homes and business in Auburn and is used as a measure of the nominal WWTP capacity. It is determined as the average daily flow during the summer without significant infiltration and inflow contributions. The ultimate sanitary flow from Auburn's service area has been estimated at 2.5 MGD.

2. **Purpose of Agreement.** The purpose of this Agreement is to address the participation of Auburn in the Project, including reservation of capacity for Auburn in the County-Auburn Joint Regional Sewer, and Management and Operations of the Project.

3. **Term and Termination.** This Agreement shall be effective as of the date first written and shall remain in effect until any of the following occurs:

a. Auburn agrees in writing to release its reserved capacity, interests, and rights under this Agreement and the Funding Agreement in exchange for a refund of all payments made to the other parties for those same interests and rights or on other terms acceptable to Auburn; or

b. Auburn transfers all of its reserved capacity in the Project to another lawful user; or

c. The Parties agree to displace this Agreement by another written management and operations agreement; or

d. The Parties otherwise agree in writing to amend or terminate this Agreement.

4. **Pipeline Capacity Purchased.** As described in Paragraph 7 of the Funding Agreement, the County has agreed to set aside and reserve for Auburn's use 5.2 MGD of capacity in the County-Auburn Joint Regional Sewer. The Parties agree that Auburn has full right to make use of or transfer this capacity as provided in this Agreement.

   a. **Transfer of Title to Capacity.** The Parties agree that Auburn may use or transfer all or any part of its purchased capacity in the County-Auburn Joint Regional Sewer and its rights under this Agreement to a lawful user of those rights. Auburn acknowledges and accepts the risk that there may be no lawful user to accept transfer of unused capacity. Auburn accepts responsibility for any necessary environmental review of such a transfer.

   b. **County Use of Purchased Capacity.** Auburn may allow the County to use all or part of the purchased capacity at any time. The County shall reimburse Auburn for such use whether or not Auburn has authorized that use in an amount equal to 110% of what the County is obliged to pay Lincoln to accept and treat that volume of wastewater at the time it makes use of that capacity unless Auburn agrees in writing to reimbursement in a different amount.

      i. County will cease use of Auburn's purchased capacity as soon as possible upon written request from Auburn to do so.

ii. County use of Auburn's purchased capacity shall be determined as follows: the County's share of the total County-Auburn Joint Regional Sewer capacity is the total capacity less Auburn's purchased capacity. Any amount used by County in excess of its share constitutes use of Auburn's purchased capacity.

5. **Project Administration.** The Parties agree to meet and confer in good faith to arrive at an acceptable role for Auburn in the administration and governance of the Project. Auburn shall be entitled to some role in project administration during both (1) the "Operations Period" as defined and discussed in the COJA, but prior to Auburn's connection to the system, and (2) the period that follows Auburn's connection to the Regional Facilities and its first receipt of treatment from the Lincoln WWTRF.

6. **General Provisions.**

   a. **Records and Accounts.** Each Party shall keep proper books of record and accounts of the finances related to the Project, in which complete and correct entries shall be made of all transactions relating to the Project. Those books shall, upon reasonable request, be subject to inspection by any Party. The rights conferred here are in addition to, and not as substitutes for, the rights of the Parties under the California Public Records Act, Government Code sections 6250 et seq., as it now exists or may hereafter be amended.

   b. **Further Assurances.** Each Party shall adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the purposes and intent of this Agreement.

   c. **Precedence of Prior Agreements.** In the event of a conflict between or among any or all of this Agreement, the COJA, and the Funding Agreement, this Agreement shall take precedence over the COJA, which shall take precedence over the Funding Agreement.

   d. **Amendment.** This Agreement may be amended only by the written agreement of the Parties approved by its legislative body and signed by

those with actual authority to do so, except that any Party may change its recipient of notices by letter.

e. **No Intended Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

7. **Notices.** Any notices too parties required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

If to County:

County of Placer
Department of Facilities Services
Attention: Mary Dietrich, Director
11476 "C" Avenue
Auburn, CA 95603

With a copy to:

Placer County Counsel
175 Fulweiler Avenue
Auburn, CA 95603

If to Auburn:

Bernie Schroeder
Director of Public Works
City of Auburn
1225 Lincoln Way, Room 3
Auburn, CA 95603-5004

With a copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
11364 Pleasant Valley Rd.
Penn Valley, CA 95946-9000

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Party may amend its address for notice by notifying the other parties in writing in the manner provided above.

8. **Indemnity.**

a. **General Indemnity.** With respect to non-CEQA claims or challenges relating to the subject of this Agreement, each Party shall indemnify, defend and hold harmless the other and its respective officers, officials, employees, agents and volunteers from any and all liabilities, claims,

demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees) which result from the negligent act, willful misconduct, or error or omission of the indemnifying Party. Auburn shall also be entitled to the same indemnification rights against Lincoln as are granted to County by section 6.1 of the COJA.

b. **CEQA Indemnity.** Auburn shall be responsible for CEQA compliance only for projects to convey wastewater from Auburn's collection system and WWTP to the point of connection to the Regional Sewer system. Auburn will indemnify the County with respect to CEQA claims or challenges arising from such projects. County shall indemnify, defend, and hold harmless Auburn from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees) arising from or related to CEQA compliance as to the County-Auburn Joint Regional Sewer.

c. **Additional Limitations on Liability.** Auburn shall have no liability for design or construction flaws which may result in damage to properties adjacent to the Regional Facilities, or which may result in nuisance actions based on emanation of malodorous gasses into properties neighboring the Regional Facilities.

9. **Dispute Resolution.** Any disagreement between the Parties regarding matters covered by this Agreement shall first be submitted for informal resolution, followed by formal notice of breach, and, finally, submitted for arbitration.

a. **Informal Dispute Resolution.**

i. The Parties shall first submit the disagreement for review by the County's Director of Facility Services and Auburn's Director of Public Works.

ii. If the Parties cannot agree on a resolution per subparagraph (i), the Parties shall submit the matter to the County's Executive Officer and the Auburn City Manager for review and consideration. These officials may elect to resolve the matter if within the scope of their

authority or submit the matter to their respective legislative bodies for review and consideration.

b. **Binding Arbitration.** If a dispute cannot be resolved pursuant to the informal resolution procedures described above, a Party may notify the others of any breach of this Agreement. If County breaches the COJA, and that breach interrupts Auburn's rights or interests under this Agreement, that breach shall also constitute a breach of this Agreement. If, after the Party in breach has been notified and given a reasonable opportunity to cure the breach, the non-breaching Party may elect to submit the dispute to binding arbitration.

   i. Unless the Parties otherwise agree in writing, the arbitration shall be conducted by ADR Services, Inc. in the City of Sacramento in accordance with its Commercial Arbitration Rules. The parties will jointly select one arbiter who will preside over the arbitration; if they are unable to agree, then each Party shall name an arbiter and the two arbiters shall then select a third arbiter, and the three-arbiter panel will then preside over the arbitration.

   ii. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief.

   iii. If either Party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing or to determine it on the papers.

   iv. Any arbitral award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in the Superior Court of California for Placer County. The costs and expenses of ADR Services, Inc. and the arbitrator(s) shall be shared equally by the parties unless the arbitrator(s) rule(s) otherwise. Each Party shall bear its own attorney's fees.

   v. A non-breaching Party shall be entitled to specific enforcement of this Agreement, in addition to any other remedies available.

10. **Severability and Survival.** If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. The Parties intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

11. **Entire Agreement.** This Agreement, together with its attachments, constitutes the entire agreement among the Parties.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

13. **Construction**.

    a. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

    b. Each Party to this Agreement had access to counsel in the negotiation and documentation of this Agreement. Accordingly, no presumption arising from the identity of the drafter of this Agreement shall apply in its construction.

14. **Waiver**. The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term,

covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by a Party unless in writing.

IN WITNESS WHEREOF, the Parties have each caused their duly authorized officers to execute this Agreement effective as of the date first written above.

COUNTY OF PLACER

By: _____

Date: _____

Attest:

By: _____

Date: _____

CITY OF AUBURN

By: _____

Date: _____

Attest:

By: _____

Date: _____

MID-WESTERN PLACER REGIONAL SEWER PROJECT

PARTICIPATION AGREEMENT

BETWEEN LINCOLN AND AUBURN

THIS AGREEMENT RELATING TO THE MID-WESTERN PLACER REGIONAL SEWER PROJECT ("Agreement") is made as of the ___ day of _____, 2014, by and between the CITY OF LINCOLN, a general law city duly organized and existing under the laws of the State of California ("Lincoln"), and the CITY OF AUBURN, a general law city duly organized and existing under the laws of the State of California ("Auburn"). Lincoln and Auburn are collectively referenced in this Agreement as the "Parties" and each of them, as a "Party."

RECITALS

A. WHEREAS, Lincoln and Auburn wish to work cooperatively to plan, design, permit, finance, construct and operate regional wastewater collection, conveyance and treatment facilities to serve the Greater Auburn Area; and

B. WHEREAS, Lincoln, and Auburn have determined that a regional wastewater project consisting generally of pumping facilities located at the County's existing Sewer Maintenance District 1 site on Joeger Road in North Auburn ("SMD 1 Site"), a conveyance pipeline connecting to the existing City of Lincoln Wastewater Treatment and Recycling Facility on Fiddyment Road in Lincoln (the "Lincoln WWTRF"), and certain improvements to the Lincoln WWTRF, as more fully described in the "Project Description" dated October 6, 2013 attached as Exhibit A (collectively the "Mid-Western Placer Regional Sewer Project" or "Project"), is in the Public Interest; and

C. WHEREAS, on March 13, 2012, the Placer County Board of Supervisors gave direction to County staff to move forward with the Project with Lincoln while keeping open the option for Auburn to Participate in the Project; and

D. WHEREAS, Placer County and Lincoln have entered into the Construction, Operations and Joint Exercise of Powers Agreement (COJA) to construct the Project, a copy of which is attached to this Agreement as Exhibit B; and,

E. WHEREAS, the COJA acknowledges in Section 3.3 that Auburn may desire at some date to participate in the Project; and

F. WHEREAS, all appropriate and necessary environmental review documents and procedures for the Project have been completed or included in other environmental review documents under the California Environmental Quality Act ("CEQA"); and

G. WHEREAS, Auburn and Placer County have negotiated a Funding Agreement to govern Auburn's financial contribution to the Project, executed on November 16, 2013, a copy of which is attached to this Agreement as Exhibit C; and

H. WHEREAS, Auburn and Placer County have further negotiated a Participation Agreement, in which Placer County has agreed to set aside and reserve for Auburn's use 5.2 MGD of capacity in the County-Auburn Joint Regional Sewer; and

I. WHEREAS, the Funding and Participation Agreements between Auburn and Placer County do not address all aspects of how Auburn will participate in the Project, although such participation is contemplated by the COJA, and Lincoln and Auburn wish to set forth their respective rights and obligations for the Project in this Agreement.

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

1. **Definitions**. This Agreement incorporates by reference Section 1.1 of the COJA ("Defined Terms"). In addition, the following words and phrases used in this Agreement shall have these meanings unless the context plainly indicates another meaning was intended:

   Auburn means the City of Auburn, a general law city duly organized and existing under the laws of the State of California.

   Construction Operations and Joint Exercise of Powers Agreement ("COJA") means the Agreement between the County of Placer and City of

Lincoln for construction and operation of the Regional Sewer system, executed October 16, 2013.

County-Auburn Joint Regional Sewer means the Junction Structure, Joint Export Sewer, and Energy Dissipation Structure and ancillary facilities that would provide for up to 5.2 MGD in reserved capacity for Auburn more fully described in Exhibit A to this Agreement.

Lincoln-County Project refers to the portion of the Regional Facilities described in Exhibit 1 to the COJA.

Lincoln WWTRF is the Waste Water Treatment and Reclamation Facility, including the system of pipes conveying wastewater from the County SMD 1 Wastewater Treatment Plant and County-Auburn Joint Regional Sewer to the treatment plant operated by Lincoln.

Peak Flow is the maximum estimated wastewater flow during wet weather periods being directed into the Regional Facilities from Auburn. Peak flow includes sanitary flows from the ultimate build-out of Auburn's service area (2.5 MGD) as well as groundwater infiltration and rainwater inflow (2.7 MGD) for a total peak flow of 5.2 MGD.

Regional Facilities (also referred to as "Project") includes the total Mid-Western Placer Regional Sewer Project facilities, connecting the Auburn sewer facilities, County SMD 1 Wastewater Treatment Plant, and the Lincoln Wastewater Treatment and Reclamation Facility.

Sanitary Flow is the wastewater from homes and business in Auburn and is used as a measure of the nominal WWTP capacity. It is determined as the average daily flow during the summer without significant infiltration and inflow contributions. The ultimate sanitary flow from Auburn's service area has been estimated at 2.5 MGD.

2. **Purpose of Agreement.** The purpose of this Agreement is to address the participation of Auburn in the Project, including reservation of treatment capacity in the Lincoln WWTRF, Management and Operations of the Project, and connection charges and service charges once Auburn is connected to the Regional Facilities.

3. **Term and Termination.** This Agreement shall be effective as of the date first written and shall remain in effect until any of the following occurs:

   a. Auburn agrees in writing to release its reserved capacity, interests, and rights under this Agreement and the Funding Agreement in exchange for a refund of all payments made to the other parties for those same interests and rights or on other terms acceptable to Auburn; or

   b. Auburn transfers all of its reserved capacity in the Project to another lawful user; or

   c. The Parties all agree to displace this Agreement by another written management and operations agreement; or

   d. The Parties otherwise agree in writing to amend or terminate this Agreement.

4. **Rates and Charges.** The Parties anticipate that participation in the Project will occur in two phases: (1) the "Operations Period" as defined and discussed in the COJA, but prior to Auburn's connection to the system, and (2) the period that follows Auburn's connection to the Regional Facilities and its first receipt of treatment from the Lincoln WWTRF.

   a. During the Operations Period prior to Auburn's connection to the system, Auburn shall pay a "Maintenance Charge" of $____ per month. Upon Auburn's connection to the Regional Facilities and its first receipt of treatment from the Lincoln WWTRF, it will no longer pay this charge.

   b. Upon Auburn's connection to the Regional Facilities and its first receipt of treatment from the Lincoln WWTRF, Auburn shall pay a connection charge no greater than, and comparable to, connection costs paid by residents, property owners and other retail customers of Lincoln at the time of Auburn's connection.

   c. Upon Auburn's connection to the Regional Facilities and its first receipt of treatment from the Lincoln WWTRF, Auburn shall pay an Operations Charge at the same rate as that paid by Placer County, provided the rates charged to Auburn shall not be any higher than those charged to

residents, property owners and other retail customers of Lincoln. Auburn shall be entitled to the same method of calculation of rates described in section 5.2.1 of the COJA, including the provision of a credit if the annual aggregate differential is positive.

The charges described in this paragraph, and the payments agreed to in the Funding Agreement, represent Auburn's total financial commitment and obligation for connection to and use of the Regional Facilities, including conveyance, treatment, and disposal.

5. **Treatment Rights.** Auburn acknowledges that the Lincoln WWTRF may lack capacity to treat Auburn's volume when Auburn wishes to connect to the Regional Facilities. If so, Auburn will pay Lincoln's actual cost to create the capacity necessary to allow Auburn's connection. Lincoln shall not charge Auburn any more for that capacity than Lincoln establishes as the charge for other beneficiaries of additional capacity in Lincoln or the County including but not limited to residents, property owners and other retail customers of Lincoln. Auburn may purchase or build up to 2.5 MGD of treatment and disposal capacity.

6. **Sewer Conveyance Rights.** Lincoln shall provide capacity for up to 5.2 MGD for Auburn's flows in the City's trunk sewers downstream of the Regional Export Sewer.

7. **Project Administration.** The Parties agree to meet and confer in good faith to arrive at an acceptable role for Auburn in the administration and governance of the Project during the two periods identified in paragraph 4 above. Auburn shall be entitled to some role in project administration during both periods identified in that paragraph.

8. **Repairs and Rehabilitation.** Lincoln shall perform repair and rehabilitation ("R&R") of the Regional Facilities as described in the COJA, section 5.3.2. Auburn will reimburse Lincoln for its pro-rata share of non-Routine Repairs only if Auburn (1) is included in the R&R study process and (2) approves a project and the calculation of its share of the cost of that project. Auburn will bear the costs of performing repairs and maintenance of its own WWTP and sewer system facilities, to the point of connection with the County-Auburn Joint

Regional Sewer both before and after Auburn makes connection to the Regional Facilities. Auburn shall not provide any funding for projects which predate Auburn's connection to the Regional Facilities.

9. **Reclaimed Water.** Auburn shall be allocated a share of reclaimed water equal to its Proportionate Flow in each quarter and shall be entitled to dispose of its share as it sees fit.

10. **General Provisions.**

    a. **Compliance with Other Agreements; Prompt Payment.** Both Parties shall comply with all the Parties' agreements in furtherance of the Project, and shall promptly pay or cause to be paid all costs, fees, and other expenses due and payable under such agreements.

    b. **Records and Accounts.** Both Parties shall keep proper books of record and accounts of the finances related to the Project, in which complete and correct entries shall be made of all transactions relating to the Project. Those books shall, upon reasonable request, be subject to inspection by either Party. The rights conferred here are in addition to, and not as substitutes for, the rights of the Parties under the California Public Records Act, Government Code sections 6250 et seq., as it now exists or may hereafter be amended.

    c. **Further Assurances.** Both Parties shall adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the purposes and intent of this Agreement.

    d. **Precedence of Prior Agreements.** In the event of a conflict between or among any or all of this Agreement and the COJA, this Agreement shall take precedence over the COJA.

    e. **Amendment.** This Agreement may be amended only by the written agreement of the Parties approved by its legislative body and signed by those with actual authority to do so, except that any Party may change its recipient of notices by letter.

f. **No Intended Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

11. **Notices.** Any notices too parties required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed as follows:

If to Lincoln:

With a copy to:

If to Auburn:

Bernie Schroeder
Director of Public Works
City of Auburn
1225 Lincoln Way, Room 3
Auburn, CA 95603-5004

With a copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
11364 Pleasant Valley Rd.
Penn Valley, CA 95946-9000

Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Party may amend its address for notice by notifying the other parties in writing in the manner provided above.

12. **Indemnity.**

a. **General Indemnity.** With respect to non-CEQA claims or challenges relating to the subject of this Agreement, each Party shall indemnify, defend and hold harmless the others and their respective officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees) which result from the negligent act, willful misconduct, or error or omission of the indemnifying Party. Auburn shall also be entitled to the same indemnification rights against Lincoln as are granted to County by section 6.1 of the COJA.

b. **CEQA Indemnity.** Auburn shall be responsible for CEQA compliance only for projects to convey wastewater from Auburn's collection system and WWTP to the point of connection to the Regional Sewer system. Auburn will indemnify Lincoln with respect to CEQA claims or challenges arising from such projects. Lincoln shall indemnify, defend, and hold harmless Auburn from any and all liabilities, claims, demands, damages, losses and expenses (including, without limitation, defense costs and attorney fees) arising from or related to CEQA compliance as to the Project and any expansion of the Lincoln WWTRF.

c. **Additional Limitations on Liability.** Auburn shall have no liability for design or construction flaws which may result in damage to properties adjacent to the Regional Facilities, or which may result in nuisance actions based on emanation of malodorous gasses into properties neighboring the Regional Facilities.

13. **Dispute Resolution.** Any disagreement between the Parties regarding matters covered by this Agreement shall first be submitted for informal resolution, followed by formal notice of breach, and, finally, submitted for arbitration.

a. **Informal Dispute Resolution.**

i. The Parties shall first submit the disagreement for review by the Directors of Public Works for each party.

ii. If the Parties cannot agree on a resolution per subparagraph (i), the Parties shall submit the matter to the City Managers of Lincoln and Auburn for review and consideration. These officials may elect to resolve the matter if within the scope of their authority or submit the matter to their respective legislative bodies for review and consideration.

b. **Binding Arbitration.** If a dispute cannot be resolved pursuant to the informal resolution procedures described above, a Party may notify the others of any breach of this Agreement. If Lincoln breaches the COJA, and that breach interrupts Auburn's rights or interests under this Agreement, that breach shall also constitute a breach of this Agreement. If, after the

Party in breach has been notified and given a reasonable opportunity to cure the breach, the non-breaching Party may elect to submit the dispute to binding arbitration.

i. Unless the Parties otherwise agree in writing, the arbitration shall be conducted by ADR Services, Inc. in the City of Sacramento in accordance with its Commercial Arbitration Rules. The parties will jointly select one arbiter who will preside over the arbitration; if they are unable to agree, then each Party shall name an arbiter and the two arbiters shall then select a third arbiter, and the three-arbiter panel will then preside over the arbitration.

ii. The arbitrator shall be empowered to grant compensatory, equitable, and declaratory relief.

iii. If any Party requests an oral hearing, the arbitrator shall set the matter for hearing. Otherwise, the arbitrator shall decide whether to set the matter for hearing or to determine it on the papers.

iv. Any arbitral award shall be in writing and give the reasons for the decision. Judgment on the award rendered by the arbitrator may be entered in the Superior Court of California for Placer County. The costs and expenses of ADR Services, Inc. and the arbitrator(s) shall be shared equally by the parties unless the arbitrator(s) rule(s) otherwise. Each Party shall bear its own attorney's fees.

v. A non-breaching Party shall be entitled to the following remedies at a minimum:

    1. Auburn may return its capacity to Lincoln for a refund of what it has paid under this Agreement and the Funding Agreement, plus interest at the rate paid by the Local Agency Investment Fund of the California State Treasurer.

    2. Lincoln may suspend Auburn's right to connect to the Regional Facilities if Auburn has not yet done so until Auburn's breach of this agreement is cured.

3. A Party may seek specific enforcement of this Agreement.

14. **Severability and Survival.** If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. The Parties intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

15. **Entire Agreement.** This Agreement, together with its attachments, constitutes the entire agreement among the Parties.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

17. **Construction.**

    a. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

    b. Each Party to this Agreement had access to counsel in the negotiation and documentation of this Agreement. Accordingly, no presumption arising from the identity of the drafter of this Agreement shall apply in its construction.

18. **Waiver.** The waiver by any Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term,

covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by a Party unless in writing.

IN WITNESS WHEREOF, the Parties have each caused their duly authorized officers to execute this Agreement effective as of the date first written above.

CITY OF LINCOLN

By: _____

Date: _____

Attest:

By: _____

Date: _____

CITY OF AUBURN

By: _____

Date: _____

Attest:

By: _____

Date: _____

EXHIBIT ONLY

Agenda Item No.

City Manager Approval

Report to the Auburn City Council

To:	Mayor and City Council Members
From:	Bernie Schroeder, Director of Public Works
Date:	November 16, 2013
Subject:	Regional Sewer Common Pipeline Intent to Commit - Update

The Issue

Shall the City provide the City of Lincoln and the Placer County Board of Supervisors (BOS), the City of Auburn's intent to participate with the Regional Sewer Common Pipeline Project?

Conclusion and Recommendation

The City Council will provide staff direction on how to proceed with the Regional Sewer Common Pipeline Project.

Background

On October 28, 2013 the City Council approved by motion to notify the Placer County Board of Supervisors (BOS) and City of Lincoln the City's intent to purchase capacity in the Regional Sewer Common Pipe pending further evaluation of the costs to purchase capacity and the deal points Auburn presented to the BOS and City of Lincoln in April 2013. Council Member Kirby was to lead the effort to understand the origin of the buy in costs and negotiate with elected officials (See attached Draft October 28, 2013 City Council minutes).

Council Member Kirby and Mayor Hanley met with the respective agencies elected officials and will provide an update to Council of the outcome of the meeting.

Alternatives Available to Council; Implications of Alternatives

1. Notify Lincoln and Placer County the City's intent to purchase capacity in the Common Pipeline.
2. Do not participate in the Regional Sewer Project. If the common pipeline is not upsized for Auburn, connecting to Lincoln in the future would likely be significantly more expensive in the future. Notify the City of Lincoln and Placer County that the City will not participate in this project.

Fiscal Impact

The Regional Sewer Project Common Section of Pipeline Project is estimated to cost $3,021,306 based on what City of Lincoln and Placer County have presented thus far. This would require the City to complete a rate study, conduct a Proposition 218 hearing and raise sewer rates to fund the purchase as soon as practicable.

Attachments:
Attachment A – Excerpt of Draft City Council Meeting Minutes - October 28, 2013
Attachment B – October 28, 2013 Staff Report

By **MOTION**, introduce and hold a first reading, by title only, of an ordinance which approves the Rezone proposal to rezone nine lots, generally located west of Auburn Ravine Road and north of Elm Avenue from Regional Commercial (R-3) to Regional Commercial – Emergency Shelter (C-3-ES)

The motion was made by Council Member Nesbitt, seconded by Council Member Kirby. Passed by the following roll call vote:

Ayes: Nesbitt, Holmes, Kirby, Powers, Hanley
Noes:
Abstain:
Absent:

9. **Ordinance Amendment – Emergency Shelters in the Industrial (M-2) zone; Transitional and Supportive Housing in Multi-family Residential (R-3) zone**

Senior Planner Reg Murray explained this was the proposal that would add as a permitted use emergency shelters in the Industrial Zone.

(Council did not need to take action on this item because of the action taken for items 7 and 8; the item was opened for public comment.)

Public comment:

Otto Fox, spoke about his discussion with the Department of Housing and Community Development (providing their response as part of the record). He explained the impact on HOME grant funds arising from non-compliance with SB2.

Frank Caraska, resident of Auburn.

Council Member Kirby addressed the difference of opinion between him and Mr. Fox, stating he defers to the City Attorney for legal opinion.

Mayor Hanley, in the absence of an objection, declared no action needed on this item.

COUNCIL BUSINESS

10. **Regional Sewer Common Pipeline Intent to Commit**

Staff report presented by Public Works Director Bernie Schroeder. She said the action on this item is to provide staff with direction on where to go with the Regional Sewer Common Pipeline project. She reviewed past actions which resulted in 9 deal points approved by Council which were forwarded to Placer County and the City of Lincoln. She said the

project was bid in the summer, which totaled $37.7 million, combined with all costs associated with the project totaling $73 million. She said Placer County and City of Lincoln are now requesting the City Council make a decision regarding the common pipeline (the section of pipe that could be used by the City of Auburn and the other parties) by November 1st. She said the project is estimated to cost the City of Auburn $3,021,306 with a 25% contingency added, making it $3,776,632 (based on the construction bids received). She addressed the deal points individually and the response or lack of response on each.

Council Member Kirby asked about the deal points not being included in the current agreement from Placer County, the Regional Water Quality Control Board's view on Auburn as a stand-alone vs. regional, and the Regional Board's knowledge of the deal points requested.

Council Member Nesbitt asked about the capacity purchase agreement deal point to include Lincoln's responsibility to purchase the capacity if a deal is rejected.

Council Member Holmes asked about the contingency requirements, the November 1st deadline, decommissioning of Auburn's plant, Proposition 218 hearings, and the fiscal commitment deadline.

Mayor Hanley asked about the weekly PCT meetings and the COJA (agreement).

No member of the public wished to comment.

Council Member Powers said she believes the option of having a regional connection should always be kept open. She said there will always be big risks of having to do major upgrades locally. She said she supports maintaining capacity to go regional with further clarification of the costs and working closer with the County and the City of Lincoln on deal points.

Council Member Kirby said he is disappointed the deal points were not addressed more specifically from the regional sewer partners. He said he is in favor of a regional plant, and reserving capacity is the right thing to do. He said he is surprised to see the estimates come back higher when the bids came in lower.

Bill Zimmerman, Deputy Director with Placer County Facility Services, said he would be happy to take back any action the board takes tonight. He said information needs to be provided to Lincoln, as they are ready to award construction contracts. He said a majority of the deal points are ultimately going to be between the City of Lincoln and the City of Auburn because the City of Lincoln owns, operates and maintains the facilities.

Council Member Holmes said he does not want to see this opportunity get passed up.

Council Member Nesbitt spoke about Auburn's participation in this project, costs associated with running the local plant while participating in the regional sewer project, increasing estimate of Auburn's share, and a decision with conditions.

Mayor Hanley said the City of Auburn has been willing to engage in this issue over the past 15 years to work something out. He spoke about a how a true regional structure, where costs and benefits are shared and a Joint Powers Authority were never constructed. He said there are many unknowns. He said he feels like they are being asked to give a blank check, in which the taxpayers would be on the line for. He said he can't support moving forward with this project.

By **MOTION**, notify Placer County and the City of Lincoln of Auburn's intent to purchase capacity in the common pipe pending further evaluation of the costs and the deal points presented to those respective agencies in April 2013. There will be an aggressive pursuit led by one of the Council Members (in concert with staff) to understand the origin of the buy-in costs and negotiate with elected officials from Placer County and the City of Lincoln regarding Auburn's deal points. This item would then be brought back to Council for consideration.

The motion was made by Council Member Kirby, seconded by Council Member Holmes. Passed by the following roll call vote:

Ayes: Holmes, Kirby, Powers
Noes: Nesbitt, Hanley
Abstain:
Absent:

REPORTS

11. City Council Committee Reports

Council Member Nesbitt reported on the Placer County Transportation Planning Agency meeting. He said they are trying to develop funding strategies for transportation needs.

Council Member Holmes reported on the Auburn Arts Commission and some projects they are currently working on.

Council Member Kirby reported on the Bud Anderson Statue unveiling event on November 7th at the Van Howd Studio.

Council Member Powers reported on a successful Commercial Real Estate Broker breakfast held at the Auburn Airport.

ADJOURNMENT

Mayor Hanley adjourned the meeting, without objection, at 10:04 p.m.

Kevin Hanley, Mayor

Stephanie L. Snyder, City Clerk

Report to the Auburn City Council

Action Item

Agenda Item No.

City Manager Approval

To:	Mayor and City Council Members
From:	Bernie Schroeder, Director of Public Works
Date:	October 28, 2013
Subject:	Regional Sewer Common Pipeline Intent to Commit

The Issue

Shall the City provide the City of Lincoln and the Placer County Board of Supervisors (BOS), the City of Auburn's intent to participate with the Regional Sewer Common Pipeline Project?

Conclusion and Recommendation

The City Council will provide staff direction on how to proceed with the Regional Sewer Project.

Background

The Regional Sewer Project has progressed to the point of having a public bid for the construction project. The City has recently received additional correspondence from the City of Lincoln and Placer County regarding their schedule, intent to award, and Auburn's proposed share of costs for the common pipeline. That correspondence is attached to this report as Attachment A & B. Of particular importance is the County's request for Auburn's intent to participate by November 1, 2013.

In April 2013 the Council sent deal points for how the City could consider participating in the common pipeline. The premise of the deal points was that the City needed an understanding of how the regional system would be operated (governance structure, future cost methodology, operations and maintenance responsibilities, capacity purchased, etc.) prior to advancing funding of the common pipeline. In June 2013 the City received a response from the staff at the City of Lincoln and Placer County to the April 2013 letter from the Council (see Attachment D). Some of these deal points needed to be flushed out as part of the agreement that was recently approved by the Board of Supervisors (BOS) on October 8, 2013. This agreement is called the Construction, Operations, and Joint Exercise of Powers Agreement (COJA). A summary of the COJA between Lincoln and Placer County is attached to this report as Attachment C.

Staff has attempted to summarize the status of each of these deal points by annotating the original set of Council's items below. We believe the recent correspondence (attached to this report) is the only correspondence the City has received from the agencies related to Auburn's Deal Points and Auburn's Deal Points were not discussed by the BOS at the October 8th meeting. As a result, some items have Staff's opinion of how the deal point would be addressed based on the current COJA language.

Alternatives Available to Council; Implications of Alternatives

1. Notify Lincoln and Placer County the City's intent to purchase capacity in the Common Pipeline for $3,021,306, on the mutual acceptance of the Deal Points previously submitted.
2. Notify Lincoln and Placer County the City's intent to purchase capacity in the Common Pipeline for $3,021,306, on the mutual acceptance of a revised set of deal points that are discussed at tonight's council meeting.
3. Do not participate in the Regional Sewer Project. If the common pipeline is not upsized for Auburn, connecting to Lincoln in the future would likely be significantly more expensive in the future. Notify the City of Lincoln and Placer County that the City will not participate in this project.

Fiscal Impact

The Regional Sewer Project Common Section of Pipeline Project is estimated to cost $3, 021,306 based on the construction bids received. In addition, because the County is obligating Auburn to be responsible for any construction cost overruns associated with the common section of pipeline installation there should be a contingency included in the construction bid number. Based on County staff incorporating a 25% contingency to their portion of the project, staff is recommending that the estimated cost of the common section of pipeline be $3,776,632. Funding for the Regional Sewer Project Common Section of Pipeline will require the City to complete a rate study, conduct a Proposition 218 hearing and raise sewer rates to fund the purchase. Although staff has not conducted a thorough financial analysis we believe the impact to the existing rate is approximately $3.00 -$4.00 per EDU per month plus the CPI adjustment currently in the rate model for a total estimated impact of $4.00 - $5.00 per EDU per month. If it is the direction of the Council to move forward with the purchase of capacity in the common line and/or following acceptance of the proposed Deal Points staff would suggest a Revenue Study be prepared to initiate the rate increase and Proposition 218 Hearings.

Additional Information

If Auburn were to move forward with connecting in the regional pipe in the future there would be a series of additional efforts and associated costs incurred at some point in the future, including:

- Engineering, environmental and construction costs of a pump station at the existing Auburn Wastewater Treatment Plant.
- Decommissioning costs to the Auburn Plant.
- Engineering, environmental and construction costs of a new trunk line connecting to the regional pipe.
- Buy in to connect to the Lincoln Facility including upgrades deemed necessary to provide capacity.

These facilities were previously estimated at $36 million in current dollars.

Attachments:

Attachment A – Oct 4, 2013 Letter from City of Lincoln
Attachment B- Oct 4, 2013 Letter from Placer County
Attachment C- Summary of the COJA between Placer County and the City of Lincoln (from October 8th, 2013 BOS Staff Report).
Attachment D – June 24, 2013 Letter from City of Lincoln & Placer County

REGIONAL SEWER COMMON PIPELINE DRAFT DEAL POINTS TO CONSIDER

Agreement with Placer County

For Auburn, staff is proposing City Council consider these general provisions to be included in a model type agreement with Placer County for the construction of the Regional Sewer Common Pipeline Section.

1. Auburn's buy in for the common section of pipeline only is estimated at $2.8 million but would be adjusted based on actual construction bids.

   Status: The cost to Auburn for the common section is $3,021,306 based on the construction bids received in September 2013. In addition, because the County is obligating that Auburn be responsible for construction cost overruns associated with the common pipe installation there should be a contingency in the above stated amount. County staff has indicated their costs include a 25% contingency. If Auburn were to include this same contingency the amount would be $3,776,632.

2. Auburn would be presented an option to participate in the common pipeline prior to the award of the County related regional project (estimated to be in Sept 2013). This would be an understanding under an agreement with Placer County.

   Status: See attached letter from Placer County dated October 4, 2013 requesting Auburn's commitment on Auburn's intent by November 1, 2013.

3. Auburn shall have the right to sell the capacity in the common section of pipeline in the future.

   Status: Not included in the COJA.

4. Auburn would reimburse the County as the work is completed, not upfront. Conceivably over the 2 year construction period.

   Status: While not specifically addressed in COJA for Auburn, the COJA describes reimbursements between the County and Lincoln as the work is completed. Staff believes a similar reimbursement schedule would be applied for Auburn.

5. Auburn will receive ownership of Auburn's share of the common pipeline. Auburn will have the capacity to direct peak flows of 5.2 mgd into the pipeline.

   Status: Not included in the COJA

6. Any costs or changes in scope associated with the agreement would be approved by the Auburn City Council.

Status: Not included in the COJA

7. At the time of connection to the common pipe, Auburn would be charged a pro-rata share of the annual pipeline operations and maintenance (O&M) costs. Auburn's operations and maintenance costs shall be determined by some rational means reflecting Auburn's percentage of capacity the common pipeline as well as the relative pipe lengths between Placer County and Auburn.

   Status: While not specifically addressed in COJA for Auburn, the COJA describes operations charges per equivalent dwelling unit (EDU) set at base rate which is annual adjusted based on the average percentage change in the total operations costs from comparable facilities. The annual O&M costs for Placer County in the COJA is $24 / EDU which includes both treatment plant and pipeline O&M costs. These costs would be included in future rate increases at the time Auburn connects.

8. A mutually agreed upon JPA shall be formed within five years of the date the City of Auburn agrees to purchase capacity in the common pipe.

   Status: the COJA describes an Oversight Committee consisting of two members of Party's Board or Council with certain major decisions requiring approval of both the BOS and City Council. While Auburn is not currently described in the COJA, we might expect the Oversight Committee to include two representatives from Auburn.

9. It is Auburn's understanding that Placer County has purchased wastewater capacity for 4.2 mgd of average dry weather flow and 14.7mgd of peak wet weather flow. These flows are pumped into the regional pipelines and City of Lincoln trunk sewers and wastewater treatment plant. Online flow measurement at the SMD1 Pump Station will be used to confirm these flows are not exceeded. Flows exceeding these Placer County flows would reduce Auburn's purchased capacity of 2.5 mgd (average) and 5.2 mgd (peak) into the pipelines. This would represent a violation of the proposed agreement.

   Status: These values have remained unchanged in the COJA and design. The facilities will include online flow measurement.

Agreement with the City of Lincoln

For Auburn, staff is proposing City Council consider these general provisions to be included in a model type agreement with the City of Lincoln for the Regional Sewer Common Pipeline Section.

1. Auburn's owns capacity of 5.2mgd in the common section of pipeline.

   Status: This value has remained unchanged in the COJA and design. The purchase price is $3,021,306. In addition, because Auburn would be responsible for construction cost overruns associated with the common pipe installation there should be a contingency in the above stated amount. County staff has indicated their costs include

a 25% contingency. If Auburn were to include this same contingency the amount would be $3,776,632.

2. Auburn reserves future capacity to send 5.2mgd peak hourly flows, 2.5mgd average dry weather sanitary sewer flows in all downstream wastewater facilities (sewers, treatment facilities,&effluent disposal facilities). The 2.5 mgd of sanitary flow represents about 10,500 EDUs and a wastestrength of about 6,000 lbs /d of biochemical oxygen demand (BOD).

   Status: The COJA does not describe specific flows and load capacity from Auburn.

3. At the point in the future when Auburn and Lincoln mutually agree to connect, Auburn would be charged no more than the City of Lincoln's current resident connection fee for wastewater collection, treatment, and disposal. A joint connection fee study will be prepared to define Auburn's connection fee. This would also apply to any capacity sold by the City of Auburn.

   Status: A connection fee study was completed for Placer County SMD 1 residents and is referenced in the COJA. The proposed fee is$ 5,295 per EDU for regional facilities plus the costs for local facilities at SMD1 (local sewers, administration) for a total fee of $ 9,733 per EDU. Auburn might expect a similar magnitude of connection fee in the future, adjusted for inflation.

4. Auburn can sell/ transfer this agreement to another agency with similar flows/quality.

   Status: The COJA does not describe the selling or transferring of capacity to another agency.

5. A mutually agreed upon JPA shall be formed within five years of the date the City of Auburn agrees to purchase capacity in the common pipe.

   Status: the COJA describes an Oversight Committee consisting of two members of Party's Board or Council with certain major decisions requiring approval of both the BOS and City Council. While Auburn is not currently described in the COJA, we might expect the Oversight Committee to include two representatives from Auburn.

6. At the time of connection to the common pipe, Auburn would be charged a pro-rata share of the annual pipeline O&M costs. Auburn's operations and maintenance costs shall be determined by some rational means reflecting Auburn's percentage of capacity the common pipeline as well as the relative pipe lengths between Placer County and Auburn.

   Status: While not specifically addressed in COJA for Auburn, the COJA describes operations charges per equivalent dwelling unit (EDU) set at base rate which is annual adjusted based on the average percentage change in the total operations costs from comparable facilities.

Attachment A

City of
Lincoln
Live. Life. Lincoln

October 4, 2013

Ms. Bernie Schroeder
Director of Public Works
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

Mr. Bill Zimmerman, P.E.
County of Placer – Department of Facility Services
11478 C Avenue
Auburn, CA 95603

Subject: Regional Wastewater Sewer Project - Common Pipeline Upsizing

Dear Ms. Schroeder:

As you are aware, the Regional Program has moved forward and has received Construction Bids for all three elements of the Regional System. Within the Regional Pipeline Bid, the differential cost for upsizing the Common Pipeline Segment from the point of future connection by the City of Auburn to the junction of existing Gravity Sewer System was received and evaluated by Placer County with the cost for the City of Auburn to participate in future connections to the Regional System by investing in the upsizing of the Common Pipeline at this time. Construction Contracts have been reviewed and are projected to be awarded on November 19th by the Lincoln City Council. Prior to the award date on November 19th, the City must confirm to the Contractor the basis of award to include the Upsized Common Pipeline or not.

Please be advised that at this time, a response and confirmation from the County must be received by the City of Lincoln no later than November 1st, 2013 in order for the award for the Construction Contract to include the upsized Common Pipeline. The City of Auburn and the County of Placer have a proposed financial agreement which needs to be ratified in order for the County to provide Lincoln with authority to add the upsized construction cost to this Project. If a written directive is not received by the City of Lincoln from Placer County by November 1st, the Construction Contract will proceed with the reduced size Common Pipeline.

Sincerely,

CITY OF LINCOLN

David C. Lee, P.E.
Project Manager

CITY OF LINCOLN

Mark Miller
Director of Public Services

DCL/rs

City Hall
600 Sixth Street
Lincoln, CA 95648
(916) 434-2400
www.ci.lincoln.ca.us

Attachment E

COUNTY OF PLACER

BOARD MEMBERS

JACK DURAN
District 1

JIM HOLMES
District 3

ROBERT M. WEYGANDT
District 2

KIRK UHLER
District 4

JENNIFER MONTGOMERY
District 5

OFFICE OF COUNTY EXECUTIVE
David Boesch, County Executive Officer

175 FULWEILER AVENUE / AUBURN, CALIFORNIA 95603
TELEPHONE: 530/889-4030
FAX: 530/889-4023
www.placer.ca.gov

October 4, 2013

Mr. Bob Richardson, City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

RE: Auburn participation in the Mid-Western Placer Regional Sewer Project

Dear Mr. Richardson:

On October 8, 2013, the Board of Supervisors will consider approval of the Construction, Operations, and Joint Exercise of Powers Agreement with the City of Lincoln for the Mid-Western Placer Regional Sewer Project (Regional Project). Shortly following execution of the Agreement, Lincoln plans to award construction contracts for the Regional Project.

As you are aware, the County has funded the environmental review of improvements that will allow for Auburn's participation in the Regional Project, and has designed a portion of the Regional Project pipeline to be oversized to accommodate future flows from Auburn. Based on construction bid results, the cost to Auburn for this oversizing is $3,021,306, including costs for the previously mentioned design and environmental work. This cost is subject to adjustment during construction due to differing site conditions or other changes that will be addressed through construction contract change orders.

In order to have the work included in the pipeline construction contract award, the County needs a commitment on Auburn's intent to fund construction of the pipeline oversizing no later than November 1, 2013. If you have any questions or concerns please feel free to contact Mary Dietrich, Director of Facility Services at (530) 886-4957.

Sincerely,

COUNTY OF PLACER

David Boesch
Placer County Executive Officer

CC: Placer County Board of Supervisors
Jim Estep, Lincoln City Manager

Attachment C

MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER

To: **BOARD OF SUPERVISORS** Date: **OCTOBER 8, 2013**

From: **MARY DIETRICH / BILL ZIMMERMAN**

Subject: **MID-WESTERN PLACER REGIONAL SEWER PROJECT – CONSTRUCTION, OPERATIONS AND JOINT EXERCISE OF POWERS AGREEMENT**

ACTION REQUESTED / RECOMMENDATION:

1. Adopt a Resolution approving the Construction, Operations and Joint Exercise of Powers Agreement (COJA) with the City of Lincoln (Lincoln) for the Mid-Western Placer Regional Sewer Project (Regional Project) for a Capital Charge of $73,203,000, to be adjusted for inflation pursuant to the terms of the COJA, funded through Sewer Maintenance District 1 (SMD 1) fees at no net County cost.
2. Approve the First Amendment to the Design and Environmental Review Agreement (DERA) re-allocating $481,350 of the Capital Charge into the DERA to fund easement acquisition costs with no increase to the Capital Charge and at no net County cost.
3. Approve a Budget Revision in the amount of $40,000,000 to increase the FY 2013-14 SMD 1 Regional Sewer Capital Project Budget from $9,511,944 to $49,511,944, funded through a combination of SMD 1 reserves and a Clean Water State Revolving Fund (SRF) financing agreement repaid through SMD 1 fees at no net County cost.

BACKGROUND: On March 13, 2012, your Board directed staff to pursue Lincoln's offer (Lincoln Offer) to complete the Regional Project in order to bring the SMD 1 Wastewater Treatment Plant (Plant 1) into compliance with its regulatory permits. Subsequently, on August 7, 2012, your Board approved the DERA with Lincoln for the design, environmental review, regulatory permitting and easement acquisition for the Regional Project which includes decommissioning Plant 1 and constructing a pump station on the site, installation of approximately 13 miles of pipeline from Plant 1 to Lincoln, and construction of 1.7 million gallons per day of capacity at the Lincoln Wastewater Treatment Plant. Additionally, the DERA provides for a design option that would oversize a portion of the regional pipeline (Common Pipeline) to accommodate future wastewater flows from Auburn. Lincoln has completed the design and environmental work included in the DERA.

On April 12, 2012, your Board authorized the Director of Facility Services to file an SRF financial assistance application that would transfer financing obtained for the SMD1 Upgrade Project to the Regional Project. This financing includes a 30-year extended term loan at an estimated 1.9% interest with $6 million in principal forgiveness. All of the environmental permitting needed to complete our financing application package has been submitted to the SRF. Approval of the executed COJA will allow the County to finalize the application package and secure the principal forgiveness.

Construction, Operations and Joint Exercise of Powers Agreement
On August 7, 2012, your Board approved Deal Points that along with the provisions of the Lincoln Offer would serve as the framework for negotiating an agreement providing for the construction and operation of the Regional Project. Over the past year, County and Lincoln staff negotiated the terms of the COJA consistent with that framework.

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In summary, the COJA provides for the construction of the Regional Project for a Capital Charge of $73,203,000. This amount includes a 2% inflationary budget and will be adjusted for actual inflation from the date of the Lincoln Offer, February 2012, to the scheduled midpoint of construction, July 2014. Staff estimates that this adjustment will add between $1,500,000 and $2,000,000 to the Capital Charge. Lincoln bid the Regional Project as three (3) separate construction contracts: the Regional Pipeline; the SMD 1 Pump Station; and the Lincoln Wastewater Treatment Plant Expansion. Bid openings held in late August and early September resulted in a combined construction bid cost of $39,564,063. A Capital Contingency of $9,850,249 is available for unanticipated project costs. In addition, the Capital Charge includes a $7,070,338 payment to Lincoln for oversizing in their collection system that Lincoln has pledged back to the Project as additional contingency. At the end of construction, any remaining Capital Charge, up to a cap of $17,806,800 ($2,200 per existing EDU), will be paid to Lincoln as an Oversizing Payment. Cost overruns exceeding the Capital Charge will be borne by the County and SMD 1. A breakdown of the Capital Charge based on the construction bid amounts is included as Attachment A.

Under the terms of the COJA, Lincoln will provide treatment for wastewater from SMD 1 as well as operation and maintenance of the SMD 1 Pump Station and Regional Pipeline for a 2011 base year cost of $24/month/Equivalent Dwelling Unit (EDU) that will be adjusted annually to reflect changes in operational costs. The COJA includes funding obligations for repair and rehabilitation (R&R) projects, including Lincoln's obligation to fund the R&R obligation for operation of their treatment plant from its opening in 2004 to completion of the Regional Project in 2015. The current monthly maintenance and operation fee in SMD 1 of $95.78/EDU provides adequate funding for the operations charge and the County's R&R obligation. In addition, The COJA includes a connection fee analysis that estimates the regional component for new connections at $5,295/EDU. This equates to an estimated total Connection Fee of $9,733/EDU including a local component retained for use by SMD1. The current SMD 1 Connection Fee is $8,057/EDU. Staff will return to your Board with a proposed Connection Fee adjustment later this year.

The Lincoln City Council is scheduled to consider the COJA on the morning of October 8, 2013. Assuming the Council approves the COJA, your Board's approval of the COJA will complete the approval process and allow staff to finalize the SRF application package. An Executive Summary of the COJA, including details on the construction, operations, risk management / dispute resolution, and governance provisions is included as Attachment B. Full copies of the COJA have been provided individually to your Board and are available for review at the Clerk of the Board.

Auburn Participation

Construction bids for the Regional Pipeline included an option to oversize the Common Pipeline to accommodate wastewater flows from Auburn. Using the bid results as a basis, the incremental cost for construction of the oversizing is $2,091,100. County staff provided Auburn with a pro rata cost of $3,021,306 to participate in the oversize the pipeline. In addition to Auburn's proportional share of the pipeline construction, this cost includes pavement restoration, construction management and repayment of the $203,000 previously funded by the County for DERA environmental and design work performed to maintain Auburn's ability to participate in the Regional Project.

First DERA Amendment

As stated above, the DERA provides for the design, environmental review, regulatory permitting and easement acquisition for the Regional Project. The original pipeline alignment was primarily within County roadway rights of way. Through the course of design, portions of the pipeline were

realigned to a more efficient cross-country route. The cost of easements for the cross-country alignment is included in the Capital Charge, but was not included in the DERA budget. The First Amendment re-allocates $481,350 of the Capital Charge into the DERA to fund easement acquisitions. The First Amendment does not increase the Capital Charge.

ENVIRONMENTAL CLEARANCE: On May 28, 2013, the Lincoln City Council, as Lead Agency, certified the EIR and adopted the MMRP for the Regional Project. The NOD was filed on May 29, 2013. On August 20, 2013, your Board, as a Responsible Agency, approved the EIR and MMRP, for use on the Regional Project.

FISCAL IMPACT: The Capital Charge of the COJA is $73,203,000 that will be adjusted for inflation to July 2014. Approval of the attached Budget Revision will increase the FY 2013-14 SMD 1 Regional Sewer Capital Project Budget by $40,000,000 from $9,511,944 to $49,511,944. This increase is funded through a combination of SMD 1 reserves ($1,000,000) and a Clean Water State Revolving Fund (SRF) financing agreement repaid through SMD 1 fees ($39,000,000). The current monthly maintenance and operation fee in SMD 1 of $95.78/EDU provides adequate revenue for loan repayment. Approval of the COJA and the Budget Revision will result in no net County cost.

MD:BZ:LM

CC: COUNTY EXECUTIVE OFFICE
TREASURER/TAX COLLECTOR

ATTACHMENT: RESOLUTION
FIRST DERA AMENDMENT
BUDGET REVISION
ATTACHMENT A – CAPITAL CHARGE BREAKDOWN
ATTACHMENT B – COJA EXECUTIVE SUMMARY

\\PLACERCO\DEWITT\FAC\FAC\BSMEMO2013\EE\MWPRSP COJA FINAL.DOCX

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Before the Board of Supervisors
County of Placer, State of California

In the matter of: A RESOLUTION APPROVING AND AUTHORIZING THE CHAIR OF THE BOARD OF SUPERVISORS TO EXECUTE THE CONSTRUCTION, OPERATIONS AND JOINT EXERCISE OF POWERS AGREEMENT IN THE AMOUNT OF $73,203,000, AND AUTHORIZING THE COUNTY'S AUTHORIZED REPRESENTATIVE TO TAKE SUCH OTHER ACTIONS AS MAY BE REASONABLE, APPROPRIATE AND/OR NECESSARY FOR THE MID-WESTERN PLACER REGIONAL SEWER PROJECT.

Resolution _____

The following ___**RESOLUTION**___ was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:
Noes:
Absent:

Signed and approved by me after its passage.

_____
Chair, Board of Supervisors

Attest:

_____
Clerk of said Board

WHEREAS, the City of Lincoln (Lincoln) and the County of Placer (County) have determined that the Mid-Western Placer Regional Sewer Project (Regional Project), as described in the Construction, Operations and Joint Exercise of Powers Agreement (COJA) presented to the Placer County Board of Supervisors on October 8, 2013, is in the public interest, and

WHEREAS, the County and City previously entered the "Design and Environmental Review Agreement" dated as of August 14, 2012, as amended to date ("DERA"), whereby County and Lincoln have been working cooperatively to plan, design, acquire real property interests and necessary permits, and prepare for the construction of a regional wastewater collection, conveyance and treatment facilities to serve the County's Sewer Maintenance District 1 sewer service area, and

WHEREAS, the COJA addresses the Parties' responsibilities with regard to construction, payment, operations, connection fees, claiming unused capacity, reclaimed water, among other things, and provides a process for the Parties to address long-term governance of the Regional Project, and

WHEREAS, California Government Code Section 6500 et seq. provides authority for the County and Lincoln to enter into an agreement providing for the joint exercise of their statutory powers, and

WHEREAS, the Parties have now completed the design of the Regional Project, obtained approval of the Regional Project pursuant to the California Environmental Quality Act (CEQA), obtained sufficient real property interests to allow construction of the Regional Project to begin, and obtained bids for the construction of the Regional Project, and

WHEREAS, the COJA anticipates various County actions during its term and will require an Authorized Representative to carry out and implement the County rights and obligations under the agreement, and

WHEREAS, the Regional Project may require the acceptance of, or other actions associated with, certain infrastructure and property interests, including infrastructure and/or property interests associated with the Bickford Ranch development project, and

WHEREAS, the total Capital Charge for the Regional Project is $73,203,000, to be adjusted for inflation to July 2014 pursuant to the terms of the COJA.

NOW THEREFORE BE IT HEREBY RESOLVED by the Board of Supervisors, County of Placer, State of California, that this Board approves and authorizes the Chair to execute the Construction, Operation and Joint Exercise of Power Agreement for the Mid-Western Placer Regional Sewer Project, and

BE IT FURTHER RESOLVED that the County's Director of Facility Services is hereby confirmed as the County's Authorized Representative for the Regional Project and is authorized to take all such actions as may be reasonable, appropriate and/or necessary pursuant to the COJA or otherwise in furtherance of the Regional Project, and

BE IT FURTHER RESOLVED, that the County's Director of Facility Services is hereby authorized to take such actions as may be reasonable, appropriate and/or necessary to accept, or otherwise act on the County's behalf, regarding infrastructure and/or property interests associated with the Regional Project, including, without limitation, infrastructure and/or property interests associated with the Bickford Ranch development project.

FIRST AMENDMENT TO
DESIGN AND ENVIRONMENTAL REVIEW AGREEMENT
RELATING TO
THE MID-WESTERN PLACER REGIONAL SEWER PROJECT

This First Amendment to the Design and Environmental Review Agreement Relating to the Mid-Western Placer Regional Sewer Project is entered as of the _____ day of _____, 2013, by and among and the COUNTY OF PLACER, a political subdivision of the State of California ("County") and the CITY OF LINCOLN, a city duly organized and existing under the laws of the State of California ("Lincoln").

Recitals

Whereas, Lincoln and the County wish to work cooperatively to plan, design, permit, finance, construct and operate the Mid-Western Placer County Regional Sewer Project ("Project"); and

Whereas, the Project will consolidate the treatment of wastewater from Lincoln and the County's North-Auburn Sewer Maintenance District 1 at the Lincoln Wastewater and Treatment Reclamation Facility; and

Whereas, Lincoln and the County executed the Design and Environmental Review Agreement (DERA) for the Project on August 20, 2012, which delineated the duties, rights and obligations of each party for design, environmental review, right of way and/or property acquisition, financing, water rights and all other related items for the Project; and

Whereas, the DERA provided the County would pay Six Million Sixty Seven Thousand Dollars ($6,067,000 ("DERA Costs")) during the design, environmental review, permitting and land easement/acquisition period for those activities;

Whereas, the at the time of entry into the DERA the easement acquisition costs were unknown, and

Whereas, Lincoln has now finalized the easement acquisition costs in the amount of Four Hundred Eighty One Thousand Three Hundred and Fifty Dollars ($481,350), and

Whereas, the DERA provides that DERA Costs can be amended by both parties; and

Whereas, the County has agreed to increase the DERA Costs by $481,350 for a total DERA Cost of Six Million Five Hundred Forty Eight Thousand Three Hundred Fifty Dollars ($6,548,350); and

Whereas, the Parties agree the DERA Cost shall be credited against the County's Portion of the Project such that the County's Portion of the Project shall remain approximately Seventy Three Million Two Hundred ThreeThousand Dollars ($73,203,000), as adjusted, and

Whereas, the potential environmental impacts of the Project were studied in the Environmental Impact Report certified on May 28, 2013 and none of the circumstances set forth in Public Resources Code section 21166 or CEQA Guidelines section 15162 is present requiring further environmental review.

NOW THEREFORE, the Parties hereto agree as follows:

1. Paragraph 1 of the DERA shall be amended as follows:

"DERA Costs means the not to exceed amount of ~~Six Million Sixty Seven Thousand Dollars ($6,067,000)~~ Six Million Five Hundred Forty Eight Thousand Three Hundred Fifty Dollars ($6,548,350) the County will pay to Lincoln to provide permitting, design, environmental review, and negotiation of right of way and/or property acquisition and project management for the Lincoln-County Project as set forth under this Agreement."

2. DERA Exhibit B shall be amended as follows:

Lincoln Offer Design & Environmental Cost:	$5,580,000
Lincoln Revision to Design and & Environmental Cost:	$284,000
Acquisition of Right-of-Way:	$481,350
CEQA for Auburn Portion:	$153,000
Design Joint Export Sewer for Auburn as bid alternative:	$50,000
Total:	~~$6,067,000~~ $6,548,350

3. All portions of the DERA not amended by this First Amendment to Design and Environmental Review Agreement Relating to the Mid-Western Placer Regional Sewer Project remain in effect.

IN WITNESS WHEREOF, the parties have each caused their duly authorized officers to execute this Agreement effective as of the date first written above.

COUNTY OF PLACER

BY: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:

1036767 I 13583.024

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BY: _____
County Counsel

ATTEST:

BY: _____
Clerk, Board of Supervisors

CITY OF LINCOLN

BY: _____
City Manager

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

ATTACHMENT A
9/24/2013

CAPITAL CHARGE BREAKDOWN BASED ON CONSTRUCTION BIDS

CONSTRUCTION COSTS	
CONSTRUCTION	39,564,063
INFLATION ALLOWANCE (2%)	1,020,000
CAPITAL CONTINGENCY	9,850,249
SUBTOTAL - CONSTRUCTION COSTS	50,434,312
DESIGN/ENVIRONMENTAL/CONST. MGMT.	15,698,350
OVERSIZING CONTINGENCY	7,070,338
CAPITAL CHARGE	73,203,000

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Executive Summary of
Construction, Operations and Joint Exercise of Powers Agreement

This executive summary provides a high-level summary of the most significant aspects of the proposed Construction, Operations and Joint Exercise of Powers Agreement (COJA), but see the attached draft COJA for detailed contractual language and the defined terms used here.

1. Background. In February 2012, Lincoln made an updated offer to Placer County to construct and operate a project that would treat SMD 1 customers' wastewater at the Lincoln treatment facility, and the Board directed County staff to pursue the offer in March 2012. In August 2012, the Parties executed the DERA, which provided for Lincoln's design, environmental review, permitting, and land/easement acquisition for the Project. The COJA is the follow-on agreement that provides for the construction and operations of the Project.

2. Financing. The County will enter a financing agreement with the State Water Board under its Clean Water State Revolving Fund (SRF) program, with a 30 year repayment, estimated 1.9% interest, and $6M in principal forgiveness. The loan application requires the executed COJA and Lincoln having secured all necessary permits.

3. County's Financial Obligations – Construction Phase

a. Capital Costs. The COJA enumerates the categories of Lincoln's construction phase costs for which County will be responsible, including: (1) design, environmental review, permitting, easement/land acquisition; (2) construction; (3) construction management; and (4) Allowable Staff Costs. County must pay all undisputed Capital Costs per the COJA's terms, even if they exceed the Capital Charge.

b. Capital Charge. The COJA provides for a metric called the Capital Charge against which the aggregate Capital Costs are measured at Project Final Completion to determine whether and how much Oversizing Payment is generated. The Capital Charge may be adjusted for County design changes, County-responsible delays, certain County damages not paid by Lincoln, and, to a limited extent, Differing Site Conditions.

c. Capital Contingency/Oversizing Contingency. The Capital Contingency is to address unanticipated costs, including Differing Site Conditions. If the Capital Contingency is used up, then the Oversizing Contingency (equal to the amount originally estimated in the Capital Charge for the Oversizing Payment) is used. Neither contingency is available to pay for County Changes.

d. Oversizing Payment. An Oversizing Payment is generated to the extent the aggregate Capital Costs are less than the Capital Charge at Project Final Completion. If sufficiently large, the Oversizing Payment will be limited per COJA terms.

e. Paying Agent Provisions. Per COJA terms, the County Treasurer will act as the Paying Agent to make payments on behalf of Lincoln to Lincoln's designers, CM, contractors, and other payees, as well as to pay Lincoln for certain Allowable Staff Costs.

4. County's Financial Obligations – Operations Phase

a. Operations Charge. During the Operations Period, County will pay the Operations Charge to Lincoln quarterly for treating the SMD 1 wastewater. The charge is set at a 2011 base year at a base cost of $24/month/EDU, and is annually adjusted based on the average percentage change in the total operations costs of a basket of comparable facilities. Also, for 10 years County will reimburse the cost of a specified amount of replacement water to Rock Creek.

b. Funding Repair & Rehabilitation (R&R) Projects. The COJA identifies each agencies funding obligations for R&R projects. In addition, the COJA identifies Lincoln's obligation to

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cover the amount of R&R funding needed from the opening of the Lincoln treatment plant in 2004 until 2015. Costs of R&R Projects are allocated as follows:

i. Routine Repair is solely allocated to Lincoln;

ii. R&R Projects for the Lincoln plant and Lincoln pipelines downstream of the Junction Structure are funded based on a formula in the COJA that is keyed to the EDUs of connected customers for each party and Lincoln's past R&R obligation.

c. Funding Expansion Projects. Each party is solely responsible for setting and collecting the actual connection fees for its own customers, which must cover at least the applicable connection fee charges shown in the Connection Fee Report attached to the COJA. Costs of Expansion Projects are proportionately allocated to the parties based on the amount of additional capacity each receives from the project.

5. Major Risks and Mitigating Provisions

a. Project Delays. The COJA addresses the risk of delay through the following provisions:

i. Project Schedule. Lincoln will be responsible to meet certain key milestones stated in the COJA by the required dates, as may be adjusted for County-responsible delays.

ii. Recovery Plans. Lincoln will notify County within 5 days of delays, then submit a recovery plan for County's approval. To the extent there is a delay caused by County's failure to perform, and Lincoln has provided the required notice, then Lincoln will be entitled to an extension of the applicable Project Completion Dates and potentially of the Capital Charge, which will be Lincoln's sole remedy for County's delays.

iii. Delay Damages. County waives all damages against Lincoln for Lincoln-responsible project delays except for the following items that Lincoln is responsible for:

(1) Regulatory fines/penalties after the Treatment Completion Date (8/31/15) due to noncompliance of County's SMD 1 wastewater;

(2) The interest accrued on the SRF loan between the Project Final Completion Date (3/31/16) and the date when Project Final Completion actually occurs;

(3) Additional costs incurred by County for its construction-related consultants and outside advisors for the longer project; and

(4) The difference between (1) the additional costs paid by County in continuing to operate SMD 1 after the Treatment Completion Date and (2) the Operations Charge County would have paid during that period.

b. Cost Overruns. Regarding the risk of cost overruns, note the following COJA provisions:

i. Oversizing Contingency. Lincoln has put up their desired Oversizing Payment as contingency for the Project, which gives them some "skin in the game." In addition to the conventional uses of contingency, the Construction Contingency and Oversizing Contingency will be used on a first dollar basis for Differing Site Conditions.

ii. Monthly County Review. County reviews Lincoln's payment applications monthly and can dispute charges that are not reimbursable as Capital Costs.

iii. Independent Auditor. The COJA requires an Independent Auditor to audit the Capital Costs, with quarterly "spot" audits and annual complete audits.

iv. Termination. For worst case scenarios, County may terminate the COJA. Termination requires a determination of the Board that Project is impracticable or no longer in County's best interests. County would still need to pay amounts due prior to termination.

c. Third Party Claims

i. Insurance. The COJA has insurance requirements for Lincoln, County and Lincoln's designers & contractors to protect against certain third party claims.

ii. Indemnity. Per COJA terms, Lincoln is required to defend and indemnify County from claims and damages arising out of the acts or omissions of Lincoln and those for whom it is responsible, provided Lincoln is not required to indemnify anyone to the extent of that person's own active negligence. COJA also provides special Lincoln indemnities for contractor claims, prevailing wage claims and developer claims. County will defend and indemnify Lincoln from claims and damages arising out of County's active negligence on the Project, but not for Lincoln's own active negligence.

iii. Pass-through Requirements to Contractors. COJA requires Lincoln to put certain protective provisions in its Project contracts, including indemnities and insurance.

d. Failure to Perform

i. Default. If Lincoln fails to timely cure a Material Default, then COJA provides County with these potential remedies, without limitation: (1) County taking over the project and charging Lincoln with those costs allowed under COJA; or (2) obtaining a judicial order for specific performance of the COJA.

ii. Dispute Resolution. COJA provides for an escalating dispute resolution process that starts with informal efforts by the Authorized Representatives, followed by a meeting of Senior Executives, the possibility of having an Independent Expert provide a recommended solution, and then mediation. If a dispute is not resolved after mediation, then Parties are free to litigate. For critical path issues, low dollar issues and disputes over County withholding, the COJA has an expedited resolution process involving a quick hearing before a Project Neutral, whose decision is only binding until Project Final Completion.

e. Future Treatment Capacity

i. Claiming Uncommitted Capacity. For the 1st year after Treatment Substantial Completion, Lincoln will reserve an additional 0.4 MDG average dry weather flow of capacity for County to purchase at the connection fees specified in the COJA. After that, unreserved capacity is available on a first-come, first-served basis.

ii. Expansion Projects. Lincoln agrees to perform Expansion Projects requested by County, with County's collaboration in planning for it. County may undertake an expansion project at County's sole cost except as otherwise provided in COJA if Lincoln fails to timely undertake an Expansion Project reasonably requested by County or enter into an agreement with County for the project. Added capacity built for County is reserved for County exclusively.

6. Governance. Each party will designate an Authorized Representative to make decisions under the COJA. Each Authorized Representative is responsible for obtaining any needed prior authorization from the BOS/City Council when applicable. The parties will work together through a Project Coordination Team (PCT). Lincoln operates the Project during the first 5 years after completion, subject to certain rights of County. After initial 5 years, Lincoln continues to operate the Project, subject to certain rights of County, and subject further to oversight by an "Oversight Committee" consisting of two members of each Party's Board or Council, with certain listed Major Decisions requiring approval of both the BOS and City Council.

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FOR CASH TRANSFERS & RESERVE CANCELLATIONS PLEASE PROVIDE THE FOLLOWING
Fund/subFund - OCA - PCA - G/L - Sub G/L

Facility Service to do journal to transfer cash

PLACER COUNTY

BUDGET REVISION

PAS DOCUMENT NO.

POST DATE:

DEPT NO.	DOC TYPE	Total $ Amount	TOTAL LINES
12	BR	199,000,000.00	5

[X] **Cash Transfer Required**
Fund 503 Subfund 001

[X] **Reserve Cancellation Required**
Fund 503 Subfund 001 $1m

[ ] **Establish Reserve Required**

[ ] **Auditor-Controller**

[ ] **County Executive**

[ ] **Board of Supervisors**

ESTIMATED REVENUE ADJUSTMENT

DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT
12	006		503	001	990726	90726	8953			39,000,000.00
12	006		140		991078	04828	8990			40,000,000.00
									TOTAL	79,000,000.00

APPROPRIATION ADJUSTMENT

DEPT NO.	T/C	Rev	Fund	Sub Fund	OCA	PCA	OBJ 3	PROJ.	PROJ. DTL	AMOUNT
12	014		503	001	990726	90726	3778			40,000,000.00
12	014		140		991078	04828	4151			40,000,000.00
12	034		140		991078	04828	4151	704828	010000	40,000,000.00
									TOTAL	120,000,000.00

REASON FOR REVISION: TO INCREASE APPROPRIATIONS AND OFF-SETTING REVENUES IN THE CAPITAL PROJECTS FUND AND SEWER MAINTENANCE DISTRICT #1 FOR THE SMD #1 REGIONAL SEWER PROJECT.

Prepared by Valerie Bayne Ext 6803

Department Head Valerie Bayne

Board of Supervisors

Date: 9/24/13

Page:

Budget Revision # _____ FOR INDIVIDUAL DEPT USE

Distribution: ORIGINAL ONLY to Auditor

Rev 11/16/2004

ATTACHMENT A
9/24/2013

CAPITAL CHARGE BREAKDOWN BASED ON CONSTRUCTION BIDS

CONSTRUCTION COSTS	
CONSTRUCTION	39,564,063
INFLATION ALLOWANCE (2%)	1,020,000
CAPITAL CONTINGENCY	9,850,249
SUBTOTAL - CONSTRUCTION COSTS	50,434,312
DESIGN/ENVIRONMENTAL/CONST. MGMT.	15,698,350
OVERSIZING CONTINGENCY	7,070,338
CAPITAL CHARGE	73,203,000

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Attachment 1

City of Lincoln

June 24, 2013

City of Auburn
Bernie Schroeder
Director of Public Works
1225 Lincoln Way
Auburn, CA 95603

RE: CITY OF AUBURN REGIONAL SEWER DEAL POINTS

Dear Bernie:

We have received and reviewed the City of Auburn's Common Pipeline Deal Points that were submitted to the Placer County (County) Board of Supervisors and Lincoln City (Lincoln) Council via your letter dated April 25, 2013. We appreciate Auburn's continued interest in participating in the Regional Project.

As you may be aware, the Environmental Impact Report was recently certified by the Lincoln City Council and the final design of the Regional Sewer Project (Project) is nearing completion. We are scheduled to solicit construction bids for the Project in July and August with bid openings in early September. Once actual construction costs are known, we will provide you with cost information that should allow Auburn to make a decision on participating in the upsizing of the common section of pipeline.

Following the bid opening process, the Construction and Initial Operations Agreement (CIOA) between Lincoln and the County will be presented to the respective legislative bodies for approval. In addition to laying out the framework for construction of the Project, the CIOA will include provisions for developing a long term governance structure. This governance structure could be in the form of a Joint Powers Authority as requested in Auburn's Deal Points or similar structure that provides each jurisdiction with local control, and could include provisions addressing the remainder of Auburn's Deal Points. We are currently working through these issues at our weekly PCT meetings and would welcome your participation.

Please let either of us know if you have any comments or questions, or if there is any additional information we can provide.

Sincerely,

Bill Zimmerman, P.E.
Deputy Director of Facility Services
Placer County

Mark Miller
Public Services Director
City of Lincoln

BZ:lm

cc: County Executive Office
Board of Supervisors
Lincoln City Manager
Lincoln City Council

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