Agreement Between the County of Butte and the City of Chico for the Extension of Sewer Services and Installation of Certain Public Improvements in the Chico Urban Area
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Agreement between the County of Butte and the City of Chico
for the Extension of Sewer Services and Installation of Certain Public
Improvements in the Chico Urban Area

This Agreement is made by and between the County of Butte (the County) and the City of Chico (the City).

WHEREAS, the County and the City wish to cooperate in solving the groundwater nitrate contamination problem in the Chico Urban Area addressed by Order No. 90-126 of the Regional Water Quality Control Board (Order), adopted April 27, 1990, prohibiting individual septic systems from discharging waste to the groundwater; and

WHEREAS, in order to respond to the Order and address the groundwater nitrate contamination problem, the City and the County adopted a Nitrate Action Plan on March 5, 1985, committing the City and the County to develop financing plans and timetables for the construction and extension of sewers and placing density limits on developments utilizing septic systems within the Chico Urban Area, and that plan was subsequently amended by the City on October 24, 1988, and by the County on October 18, 1988, to establish a time line to sewer all parcels less than one acre in size within the Chico Urban Area; and

WHEREAS, the County adopted the Chico Urban Area Nitrate Compliance Plan (Nitrate Compliance Plan) on May 16, 2000, with the intent that it supersede and replace the Nitrate Action Plan, and the City agrees in principle to the Nitrate Compliance Plan and the implementation program set forth therein, and intends to work cooperatively with the County to accomplish the goals and programs set forth in the Nitrate Compliance Plan; and

WHEREAS, many individual properties within the Chico Urban Area are not served by sewer; and

WHEREAS, the County and the City desire to assist the Regional Water Quality Control Board and those property owners affected by the Order by providing access to sewer service; and

WHEREAS, the City owns and operates a wastewater treatment plant with adequate capacity to serve the existing residential and non-residential uses within the City and the
unincorporated portions of the Chico Urban Area; and

WHEREAS, the Policy for Implementing the State Revolving Fund for Construction of
Wastewater Treatment Facilities, as adopted by the State Water Resources Control Board and
last amended on June 18, 1998, requires inter-municipal service agreements as necessary for such
projects, and it is the intent of the County and the City that this Agreement fulfill that
requirement.

NOW THEREFORE, the County and the City agree as follows:

1. Definitions

As used in this Agreement, the following terms shall mean:

A. “Road Funds” includes funds allocated or available to the County or the City, whether
generated within the County or the City or received by the County or the City from the state or
federal government, for construction, or reconstruction of County or City roads and road-related
improvements. “Road Funds” includes but is not limited to (1) federal transportation funds
provided pursuant to the Transportation Equity Act for the 21st Century or any successor act, (2)
state transportation funds allocated to the County or City in the State Transportation
Improvement Program (STIP) and the regional Transportation Improvement Program (RTIP) or
any successor program, (3) Regional Improvement Funds resulting from Senate Bill 45 or any
successor act, (4) federal funds exchanged with the state, such as the Regional Surface
Transportation Program (RSTP) funds and the Transportation Enhancement Activities (TEA)
funds or any successor program, (5) redevelopment funds, (6) Federal Congestion Management
Air Quality Funds; and (7) any and all other funds mutually agreed to by the City and County.

B. “Road Improvement Projects” means those road construction or reconstruction
projects included in the City’s Development Fee Nexus Study and needed to improve traffic-
carrying capacity within the Urban Area, as described at Exhibit “C” to this Agreement, and any
other such projects mutually agreed to by the County and the City. “Road Improvement
Projects” does not include routine road maintenance or road construction or reconstruction
occasioned by work done under Article III of this Agreement, unless mutually agreed to by the
County and the City.
C. "Sewage Disposal System Oversight Monitoring Program" means public education, analysis, data development and monitoring pertaining to the proper functioning of individual sewage disposal systems, as may be performed by CSA 114, or other appropriate entity or agency pursuant to Section A of Article IV.

D. "Sewer Area" means any of the areas within the Chico Urban Area that are required to connect to sewer as a result of the Order, as it may be amended. County and City mutually agree to seek amendments to the Order which limit the Sewer Area to the three Primary Areas known as the "Lassen Avenue Corridor," the "Avenues," and the "Chapman-Mulberry Area" all as shown on Exhibit "A" to this Agreement.

E. "Chico Urban Area" means all of the incorporated and unincorporated area within the sphere of influence of the City, as in effect on the date of this Agreement and depicted on Exhibit "B" to this Agreement, and as that sphere may hereafter be amended.

F. "Nitrate Compliance Plan" means the Chico Urban Area Nitrate Compliance Plan, as adopted by the County on May 16, 2000.

II. Nitrate Compliance Plan

A. The Nitrate Compliance Plan builds upon and supersedes the Nitrate Action Plan and allows the City and County to work and partner to expand the financial and physical resources available to solve the issue of nitrate contamination of groundwater below the Chico Urban Area. The County and the City agree that the purpose of this Agreement is to implement the Nitrate Compliance Plan by providing public sewer service to properties within the Sewer Area that will not be served by individual sewage disposal systems under the Sewage Disposal System Oversight Monitoring Program, and to provide for cooperative Road Improvement Projects between the County and the City to improve the traffic-carrying capacity of roads and streets within the Chico Urban Area.

B. The Nitrate Compliance Plan has been submitted by the County to the Regional Water Quality Control Board. The City shall take all reasonably necessary action to assist the County in obtaining approval by the Regional Water Quality Control Board.

C. If any provisions of this Agreement, or anything done by mutual agreement of the
III. Public Sewer Service within Sewer Area

A. Sewer Connections. Properties in the Sewer Area may connect to the City's public sewer system without annexation of those properties to the City, if each such property (1) is already developed and served by an existing individual sewage disposal system as of the effective date of this Agreement, and (2) is required to be sewered under the Order, as it may be amended. Any property not required to be sewered under the Order, as it may be amended, will be subject to existing City policy regarding annexation. The County and the City agree that if any conflict exists, now or in the future, between the terms of the Agreement and provisions of Chapter 15.36 of the Chico Municipal Code, including but not limited to Section 15.36.025, the terms of this Agreement shall control or prevail over any such inconsistent provision or provisions.

B. Construction and Installation of Sewer Systems and Related Work. Construction, installation, inspection, maintenance and ownership of public sewer mains, laterals, and related facilities in the public right-of-way in the Sewer Area shall be done or caused to be done by the City, pursuant to work plans and schedules approved by the City, the County, and the Regional Water Quality Control Board (and/or the State Water Resources Control Board as applicable). Work on private property necessary for the decommissioning of septic systems and connection to sewer laterals and mains shall be done or caused to be done by the affected property owners. The County and the City will consult at the earliest reasonable time with those entities known to the County and the City to own or control facilities or equipment located within County or City rights-of-way to coordinate the work of those entities to relocate, upgrade or underground those facilities, as appropriate, with the work to be done pursuant to this Agreement.

C. Rights-of-Way and Easements. The County shall convey, or cause to be conveyed, to the City all rights-of-way and other easements required by the City in the unincorporated area for installation and construction of the public sewer system or other facilities as may be agreed to by
the parties pursuant to this Agreement. All County roads and private roads in which public sewer
or other facilities are installed and constructed pursuant to this Agreement shall remain County
roads or private roads in all respects and for all purposes unless and until annexed to the City,
and in the case of private roads, conveyed to and accepted by the City for maintenance. All
public sewer system components and facilities installed or constructed pursuant to this
Agreement and accepted by the City shall be and remain the property of the City and subject to
maintenance, repair, replacement or other disposition as the City, in its sole discretion, may
determine; however, such maintenance, repair, replacement or other disposition involving work
within County roads shall be coordinated with the County and shall be performed under
encroachment permits issued by the County within ten (10) working days of application therefor.
All sewer system components and facilities installed or constructed in private roads shall be
installed and constructed to the same standards as those installed and constructed within public
roads and shall remain private sewer facilities unless and until accepted by the City as public
improvements. Neither the County nor the City shall be responsible to inspect, maintain, or
repair these facilities during the time they remain private.

D. **Funding Sources and Methods.** The County and the City will fully cooperate as
necessary in order to secure any funding available and shall work and partner to expand the
financial resources available to solve the issue of nitrate contamination of groundwater
underlying the Chico Urban Area. Such funding may include any funding available from local,
state or federal sources and may include redevelopment funding from Greater Chico Urban Area
Redevelopment Project Area and the Chico Merged Redevelopment Project Area.

E. **Sewer Fees.** All sewer service fees charged by the City for public sewer service to
unincorporated properties within the Sewer Area, including but not limited to capacity,
connection and service fees, shall not exceed those charged for sewer service within the City.
However, the City may continue to charge a reasonable monthly City administration fee which
shall initially be the existing $0.57 per month fee but may be increased annually thereafter at a rate
not to exceed the CPI for the San Francisco Bay Area for each property in the unincorporated
area which is provided sewer service. If sewer fees are prepaid by or on behalf of the owners of
properties required by the Order, as it may be amended, to be sewered, the City will discount such fees, under terms mutually agreed to by the County and the City.

F. Annexation Elections. It is agreed that the matter of annexation of any of the three Primary Areas (Lassen Avenue, the Avenues, and Chapmantown) or any of the sub-areas within the Sewer Area may be placed on a ballot at an election not more than three years nor less than one year after all properties within such Primary Area or sub-area identified on Exhibit “E-1” and “E-2” of this Agreement are connected to the sewer. Language to be placed on the ballot in association with such elections shall be substantially in the form of the language which has been approved by both the County and the City as set forth in Exhibit “D” to this Agreement. Said ballot language may be changed by mutual written consent of the County and the City. The cost of one election for each of the three Primary Areas and each sub-area will be shared equally by the County and the City if the election is consolidated with a general election. However, if the election is not consolidated with a general election, the cost to the County will be capped at the cost the County would have incurred if the election had been consolidated with a general election, or one half of the actual cost, whichever is less. If an election fails the County and the City agree to place the question back on the ballot either every 2 or 4 years thereafter, should the City so request, at the City’s cost. The City and the County agree to support legislation to allow binding annexation elections to be held within each of the three Primary Areas without conducting the protest proceedings before the Butte County Local Agency Formation Commission that would otherwise precede such elections.

IV. Sewage Disposal System Oversight Monitoring Program

A. Source of Service. If providing the Sewage Disposal System Oversight Monitoring Program by CSA 114 becomes infeasible or less economical than other means of providing such services, the County and the City will explore the use of other means acceptable to the Regional Water Quality Control Board for providing such services within the boundaries of CSA 114. Otherwise, so long as it is economically feasible to do so, CSA 114 shall provide the Sewage Disposal Oversight Monitoring Program for individual sewage disposal systems not required to cease operation pursuant to the Nitrate Compliance Plan. The County and the City agree to
jointly petition the Local Agency Formation Commission to expand the powers of CSA 114 if
necessary to authorize CSA 114 to provide the Sewage Disposal System Oversight Monitoring
Program.

B. **Fees, Rates and Charges.** Any rate, fee or charge set or collected by the County or on
the County's behalf in connection with the Sewage Disposal Systems Oversight Monitoring
Program in the incorporated portion of CSA 114 shall not exceed that set or collected for such
activities in the unincorporated portion of CSA 114.

V. **Cooperative Road Improvement Projects**

A. **Funding and Construction.** The County and the City agree to each spend not less than
$5,500,000 to fund Road Improvement Projects which may be selected from a list of projects
identified on Exhibit “C” to this Agreement, and any other projects mutually agreed to by the
County and the City. The County and the City shall endeavor to cooperatively identify any of
such Projects which are within both the unincorporated and incorporated portions of the Chico
Urban Area and are to be jointly funded, and shall develop a timeline and completion schedule
for each such joint Project. Half of the cost of each joint project shall be funded by the County
and half by the City, unless the parties agree on another division for the cost for a particular
Project. A separate agreement shall be negotiated and executed by and between County and City
for each such joint project. In the alternative, the County may fully fund any of such projects
wholly within the unincorporated portion of the Chico Urban Area and the City may fully fund
any of such projects wholly within the incorporated portion of the Chico Urban Area, and, in
such event, the expenditure of such funds shall be credited against the County’s and the City’s
respective $5,500,000 obligations. However, all expenditures made pursuant to this section shall
be subject to the mutual commitment to seek in good faith to periodically initiate Projects valued
in the following amounts by not later than the following bid award deadlines:

- **By December 31, 2005:** County, $2,000,000; City, $2,000,000
- **By December 31, 2010:** An additional $1,500,000 each for County and City
- **By December 31, 2015:** An additional $1,000,000 each for County and City
- **By December 31, 2020:** An additional $1,000,000 each for County and City.
Delays in the above construction bid award deadlines which are caused by governmental entities other than the County or the City or are otherwise beyond the control of the County or the City shall not be regarded as a breach of this Agreement.

Any Road Funds in the specific amounts set forth above which are not expended or committed by bid awards by the County or the City pursuant to this Section within the above deadlines shall be deemed unprogrammed by the Butte County Association of Governments and held back until allocated by the Butte County Association of Governments to fund Road Improvement Projects mutually agreed to by the parties. If Road Funds cannot be held and allocated by the Butte County Association of Governments as set forth hereinafore, the parties will mutually agree on an “escrow” mechanism to achieve a comparable result. The County and the City agree that they will comply with the provisions of this section whether such funds are received through the Butte County Association of Governments or through other Road Funds.

B. Funds Utilized. The County and the City may at their discretion use any funds legally available for the purposes set forth in A above, including, but not limited to Road Funds. Any funds utilized, including, but not limited to Road Funds, funds pursuant to the Nitrate Compliance Plan, redevelopment, or any other source, by either the County or the City, that accomplishes the cooperative road improvement projects contemplated by Section A, above, shall be credited against the $5,500,000 obligation of that entity.

C. Changes in Allocations. If circumstances arise at the state or federal level that change the average annual allocation of state and federal transportation funding currently received by the County or the City, including, but not limited to, funds received through the State Transportation Improvement Program (STIP), Regional Improvement Program, or the RSTP/State Exchange Program, by more than five percent, the dollar amount committed in this Agreement shall change by the same percentage. Changes in such commitment shall apply only to the remaining balance of the commitment of the County and the City at the time of the applicable change in state or federal funding.

D. State Highway Routes 32 and 99. The County and the City agree that the completion by the state of capacity and safety improvements on State Highway Route 32 from Yosemite
Drive to State Highway Route 99 and on State Highway Route 99 from Estates Drive to Keefer
Road is important to the Chico Urban Area, and the County agrees in principle with the City's
goal of obtaining necessary state and federal funding therefor.

VI. Miscellaneous.

A. Administration. This Agreement shall be administered by the County's Chief
Administrative Officer on behalf of the County and the City Manager on behalf of the City.

B. Amendment. This Agreement may be amended only by a writing approved by the
legislative bodies of both parties.

C. Enforcement. This Agreement shall be governed by and interpreted under the laws of
the State of California. Neither party shall file an action against the other party to compel
performance or other relief unless such party first makes a 30-day written demand for cure of a
default of the Agreement on the other party and such demand has not been satisfied. The
prevailing party in such action shall recover reasonable attorneys fees and costs.

D. Duty to Defend and Indemnify. The County agrees that, upon demand by the City, it
will defend and indemnify the City, and the officers, employees and agents of the City, from any
claim, liability, loss, damage, cost, expenses (including attorneys' fees), awards, fines or
judgments (Claims) arising out of the acts or omissions of the County, or its officers, employees
and agents, as to work done or caused to be done by the County pursuant to this Agreement. The
City agrees that, upon demand by the County, it will defend and indemnify the County, and the
officers, employees and agents of the County, from any claim, liability, loss, damage, cost,
expenses (including attorneys' fees), awards, fines or judgments (Claims) arising out of the acts or
omissions of the City, or its officers, employees and agents, as to work done or caused to be done
by the City pursuant to this Agreement. However, neither party owes the other a duty of
indemnification under this section as to any act or omission of the other party that is the sole legal
cause of the Claims and that constitutes an act or omission of sole negligence or wilful
misconduct on the part of that party or any officer, employee or agent of that party.

The County and the City agree that they shall each be named as additional insureds on any
and all insurance policies obtained by third parties for any construction and related work
E. Sewer Area Annexations. The City will not initiate any annexation of any property within the Sewer Area, except upon the request of the affected property owners, or at the specific direction of the Butte County Local Agency Formation Commission, or its staff in instances where there is a pending contiguous annexation. The County agrees that, as to any sub-area within the Sewer Area which is eligible for an island annexation, the City may initiate annexation at any time five years or more after sewer connection of all units within any such sub-area. The sub-areas are set forth and identified on Exhibit "E-1" and "E-2" to this Agreement.

F. Effective Date. This Agreement is effective upon its execution; however, the County and the City understand and agree that the ability of the County to perform all its obligations hereunder is dependent upon a loan to the County from the State Revolving Loan fund being approved by the State and accepted by the County in an amount deemed sufficient by County to fund the costs of installing and constructing sewer facilities within the Sewer Area pursuant to this Agreement and the Order as it may hereafter be amended.

G. No Service Guarantees or Entitlements. The provision of public sewer service by the City to any property within the unincorporated portions of the Sewer Area shall not obligate the City in any way to provide any other service of any kind whatsoever to such property, and the City assumes no responsibility to make available or provide any other service to such property. Nothing in this Agreement creates an entitlement to or guarantees the availability of any particular City or County service or public improvement or any particular level of City or County service to any persons or property within the Urban Area.

H. No Admissions, Assumptions of Liabilities, or Third-Party Beneficiaries. This Agreement is made solely by and between the County and the City as public agencies committed to public health, welfare, and safety. Therefore:

1. Nothing in this Agreement shall be deemed or construed to be an admission by the County or the City that either, or both of them, has caused or permitted, or is causing or permitting, or threatening to cause or permit, the discharge of waste into the waters of the state in violation of any state or federal law regulating or prohibiting such conduct or
circumstances.

2. Nothing in this Agreement shall be deemed or construed to be an assumption by one party of any duty or liability, should any exist, of the other party to alleviate, remediate or otherwise abate the contamination of groundwater as prohibited by the Order.

3. Nothing in this Agreement is intended to create any third-party beneficiary rights with respect to any person, agency or entity, whether directly or indirectly affected by this Agreement.

COUNTY OF BUTTE

By

Jane Dolan, Chair
Butte County Board of Supervisors

ATTEST:

By

John S. Blacklock
Chief Administrative Officer
and Ex-Officio Clerk of the Board of Supervisors

APPROVED AS TO BUDGETARY AND FISCAL CONTROL

By

Dave Houser
Auditor-Controller
County of Butte

APPROVED AS TO FORM:

By

Bruce S. Alpert
County Counsel
County of Butte

CITY OF CHICO

By

Thomas J. Lando
City Manager

*AUTHORIZED PURSUANT TO CITY COUNCIL MINUTE ORDER NO. 32-00 ADOPTED 12/15/00

APPROVED AS TO FORM:

By

David R. Frank
City Attorney
City of Chico
EXHIBIT A - Primary Sewer Areas

PRIORITY AREAS FOR STUDY OF SEWER SERVICE FEASIBILITY

Recommenced by Regional Water Quality Control Board Staff
JANUARY 10, 1985

LEGEND

A. CURRENT SEWER CONNECTION
B. PROPOSED PRIMARY SERVICE AREAS
C. OBSERVATION/INSPECTION PRIMARY SERVICE AREAS

MAP NOTES:
[additional map notes and details]
## Exhibit C - Road Improvement Projects

<table>
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<th>Project Description</th>
<th>Cost¹</th>
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<tr>
<td>East Ave. - Reconstruct - Ceanothus Ave. to east side of Bidwell Vista subdivision</td>
<td>$2,847,150</td>
</tr>
<tr>
<td>East Ave./Cohasset Rd. - ROW Intersection Improvements</td>
<td>829,700</td>
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<tr>
<td>E. 5th Ave. - Reconstruct with drainage - The Esplanade to SHR. 99</td>
<td>2,317,566</td>
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<tr>
<td>E. 9th Ave. - Reconstruct - Oleander Ave. to Mangrove Ave.</td>
<td>374,580</td>
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<tr>
<td>Eaton Rd. - Design &amp; construct 4 lanes and median - Hicks Lane to PV Ditch</td>
<td>1,670,424</td>
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<tr>
<td>El Monte Ave./Humboldt Rd. - Install traffic signal</td>
<td>132,600</td>
</tr>
<tr>
<td>Forest Ave. - Reconstruct w/curb, gutter, sidewalk and drainage - SHR 32 to E. 8th St.</td>
<td>253,095</td>
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<tr>
<td>Garner Ln. - Reconstruct with bike lanes - The Esplanade to Urban Area limits</td>
<td>1,200,000</td>
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<tr>
<td>Hicks Ln. - Reconstruct 2 lanes to new arterial with bike lane - Eaton Rd. to Keefer Rd.</td>
<td>2,024,756</td>
</tr>
<tr>
<td>Humboldt Rd. - Widen and reconstruct with new bridge - Forest Ave. to Bruce Rd.</td>
<td>3,856,148</td>
</tr>
<tr>
<td>Manzanita Ave./Chico Canyon Rd./Bruce Rd. - Reconstruct to 4 lanes with median</td>
<td>4,468,000</td>
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<tr>
<td>Oleander Ave. - Reconstruct - E. 7th Ave. to E. 10th Ave.</td>
<td>303,713</td>
</tr>
<tr>
<td>Palm Ave. - Reconstruct - E. 3rd Ave. to E. Lindo Ave.</td>
<td>759,284</td>
</tr>
<tr>
<td>SHR 99/Hicks/Eaton/Silverbell - Install traffic signal and intersection modifications</td>
<td>506,189</td>
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<tr>
<td>Skyway/Potter Rd. - Install traffic signal</td>
<td>132,600</td>
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<tr>
<td>The Esplanade - Design, construct and widen - Shasta Ave. to 1.5 mi. north</td>
<td>2,534,668</td>
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<tr>
<td>W. East Ave./Alamo Ave. - Install traffic signal</td>
<td>132,600</td>
</tr>
<tr>
<td>W. East Ave./Guynn Ave. - Install traffic signal</td>
<td>132,600</td>
</tr>
<tr>
<td>W. East Ave. - Reconstruct roadway &amp; RR crossing to 4 lanes</td>
<td>450,000</td>
</tr>
<tr>
<td>W. 8th Ave. - Rebuild - SHR 32 to Esplanade</td>
<td>3,144,000</td>
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¹Estimated as of July 1999
Exhibit D

The question or questions to be submitted at any election called pursuant to this Agreement shall be in substantially the following form:

For an annexation:

"Shall the order adopted on _____________, 20__, by the Butte County Local Agency Formation Commission ordering the annexation to the City of Chico of the territory described in that order and designated as ____________ (insert the short form designation previously assigned by the commission) be confirmed?"

For a reorganization:

"Shall the order adopted on ____, 20__, by the Butte County Local Agency Formation Commission ordering a reorganization affecting the City of Chico and ____________ (insert names of all affected districts) and providing for ____________ (insert list of all changes of organization) be confirmed?"
NOTE: This map was prepared in September 2000. Boundaries are subject to change. For more information call Butte County Administration at 538-7631.
NOTE: This map was prepared in September 2000. Boundaries are subject to change. For more information call Butte County Administration at 538-7631.

Proposed Sewer Areas South of P
Chico Urban Area Nitrate Compliance

Project Areas  County Jurisdiction  City limits