



OFFICE OF THE
CITY MANAGER

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Chico, CA 95927 <http://www.ci.chico.ca.us>

L-AGR-1-74-4/Chrono

August 3, 2004

City of Chico
P.O. Box 3420
Chico, CA 95927

Chico Redevelopment Agency
P.O. Box 3420
Chico, CA 95927

Board of Supervisors
County of Butte
25 County Center Drive
Oroville, CA 95965

Re: Letter of Agreement Between the County of Butte, the City of Chico, and the Chico Redevelopment Agency, Regarding the Use of Redevelopment Agency Funds to Support Project Financing for Installing Public Sewer Facilities in the Chico Urban Area

This document serves as a Letter of Agreement (the "Agreement") by and among the County of Butte (the "County"), the City of Chico (the "City"), and the Chico Redevelopment Agency (the "Agency").

This Agreement is made for the purpose of addressing the existence of nitrate levels exceeding federal drinking water standards within groundwater under the Chico Urban Area and in response to Prohibition Order 90-126 (the "Order") adopted by the California Regional Water Quality Control Board, Central Valley Region, on April 27, 1990, which prohibited the use of individual disposal systems in the Chico Urban Area having densities of greater than the equivalent of one home per acre after July 1, 1995.

In response to the above, the Greater Chico Urban Area Redevelopment Project Area ("GCUARPA") was established by the City, the County, and the Agency in 1993 to construct improvements, including the financing of sewer improvements, to eliminate blighted conditions throughout the Project Area. In May 2000, the County adopted the Chico Urban Area Nitrate Compliance Plan (the "Nitrate Plan") which identified those areas impacted by the Order that would need to be sewered.

The GCUARPA includes both incorporated and unincorporated territory, with approximately 35% of the units identified to be sewered within the Nitrate Plan currently located within the City

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and approximately 65% of the units located within the unincorporated area. The number of units within the City is expected to grow as City annexes additional property within its city limits.

As a result of these facts and others, the County, City, and Agency agree as follows:

1. Fiscal Merger of Redevelopment Project Areas. County, City, and Agency agree to use good faith efforts to adopt an amendment to the Redevelopment Plan for GCUARPA which would: (i) fiscally merge the GCUARPA and the Chico Merged Redevelopment Project consisting of the Amended Southeast Chico, Central Chico, and Chico Municipal Airport redevelopment projects pursuant to Health and Safety Code Sections 33485-33489 to form the Chico Amended and Merged Redevelopment Project (the "Merged Project"), (ii) establish both a single limit on the cumulative amount of tax increment that may be collected, and a single limit on the amount of bonded indebtedness that can be outstanding at any time for the GCUARPA Project, Amended Southeast Chico, Central Chico, and Chico Municipal Airport redevelopment projects, resulting in a limit of \$2.064 billion of tax increment receipt for the Merged Project, and (iii) establish a set of merged redevelopment goals. The actions listed in the previous sentence are referred to as the "Plan Amendment." The County, City, and Agency agree that the Plan Amendment can only become effective after public hearing and adoption of the Plan Amendment by ordinance adopted by the City Council of the City and by ordinance adopted by the Board of Supervisors of the County. Nothing in this Agreement is intended to limit the discretion of the City Council or Board of Supervisors to adopt the Plan Amendment. If the City Council and the Board of Supervisors have not adopted the Plan Amendment by December 31, 2004, this Agreement shall terminate and shall be of no further force or effect.
2. Obtaining Financing for the Nitrate Plan. The County, City, and Agency will work together to seek financing to implement the Nitrate Plan. If a State Revolving Fund (SRF) loan is determined to be the appropriate financing mechanism, the County, City, and Agency will work together to form a Joint Powers Agency to be the loan applicant and make good-faith efforts to obtain the loan. The County will take primary responsibility for the preparation of the application. The City shall assist as necessary to accomplish the application. The County, City, and Agency shall not be obligated to pledge any revenue or asset to repayment of the debt incurred to provide financing for the implementation of the Nitrate Plan except for the Tax Increment Payment as described in Paragraph 4 below. If a secondary revenue source is required to secure the SRF, such revenue source shall be limited to fees which may be imposed on those property owners impacted by the Order.
3. Pledge of Agency Tax Increment. The Agency hereby pledges the tax increment from the Merged Project, beginning with the 2004-05 fiscal year (or the first year in which the fiscal merger is effective), to provide up to \$1.9 million annually of the tax increment revenue available to the Agency (the "Tax Increment Payment") to the payment necessary to secure the SRF loan or other appropriate funding mechanism obtained by the Joint Powers Agency to fund

the Nitrate Plan. It is agreed that the payment of tax increment revenue shall be subordinate to pre-existing bond debt.

4. Payment of Tax Increment Payment. The parties anticipate that the annual Tax Increment Payment may be made directly to the lender providing the financing for the implementation of the Nitrate Plan, to trustees or fiscal agents for such lenders, or into a sinking fund, the proceeds of which will be used to pay debt service on debt incurred to implement the Nitrate Plan.

5. Priority Projects. County and Agency staff shall meet and recommend to the Redevelopment Agency a list of priority projects to be funded from the Merged Redevelopment Project Area funds.

6. Low and Moderate Income Housing. County and Agency staff will meet annually to review proposed low and moderate income housing projects within the GCUARPA.

7. City to Manage, Own, and Operate Sewer Project. The City shall be responsible for project management for implementation of the public sewer installation component of the Nitrate Plan, including but not limited to preparation of bid specifications, soliciting and obtaining bids for construction of the improvements, overseeing the construction of improvements, overseeing and administering construction cost payments, and inspection and acceptance of completed improvements. The City will own all public sewer improvements constructed to implement the Nitrate Plan and will maintain those improvements.

The County shall provide all necessary interests in real property within the unincorporated area, including easements and rights of entry, on a temporary or permanent basis, as needed for public sewer improvements along roadways that are located in the unincorporated area of the County. The City shall provide all necessary interests in real property within the city limits of Chico, including easements and rights of entry, on a temporary or permanent basis, as needed for public sewer improvements along roadways that are located in the city limits of Chico. The City and County shall mutually agree to the location of all necessary easements and rights of entry within the unincorporated area. Funds from the Nitrate Plan Financing shall be utilized to cover City and County costs associated with acquisition of all necessary easements and rights of entry.

The County will provide the City and/or contractor with an encroachment permit for sewer installation work on County maintained roadways based on a set of County approved construction plans. Trench repair shall be completed to repair roadways as part of the sewer installation work. To the extent that City and County mutually agree to fund additional roadway surface and drainage improvements with funding from an agreed-upon source, the roadways may be restored to a condition better than the condition prior to the construction work.

8. Oversight Monitoring Program for On-Site Disposal Systems. As detailed in the Nitrate Compliance Plan, the County shall implement an oversight monitoring program for on-site

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disposal systems to safeguard the public health and protect groundwater quality in the Chico Urban Area.

9. Assistance with On-Site Improvements. County, City, and Agency will work cooperatively to identify programs or sources of funding that will assist property owners impacted by the Order to construct the private improvements necessary to connect their properties to the public sewer improvements that will be built to implement the Nitrate Plan.
10. Regional Water Quality Control Board to Serve as Enforcement Agency. County and City agree that the State Regional Water Quality Control Board, Central Valley Region, shall be the agency that enforces the Order as it pertains to compliance by individual property owners. The County and City do not expect to take any enforcement actions against individual property owners.
11. Adoption of Chapman Plan. City agrees to adopt a Chapman – Mulberry Improvement Plan, and Agency commits to work toward the implementation of that plan. The Chapman-Mulberry Improvement Plan will be one of the priorities of Agency.
12. Administration. This Agreement shall be administered by the County's Chief Administrative Officer on behalf of County, the City Manager on behalf of City, and the Executive Director on behalf of Agency.
13. Duty to Defend and Indemnify. The County agrees that, upon demand by the City, it will defend and indemnify the City and Agency, and the officers, employees, and agents of the City and Agency, 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. The Agency 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 Agency or its officers, employees, and agents, as to work done or caused to be done by the Agency pursuant to this Agreement. However, no party owes another party a duty of indemnification under this section as to any act or omissions of the other party that is the sole legal cause of the Claims and/or that constitutes an act or omission of sole negligence or willful misconduct on the part of that party or any officer, employee, or agent of that party. Provided, however, in the event a Joint Powers Agency is formed as set forth in Paragraph 2, it is the intent of the parties that such Joint Powers Agency would be solely responsible for any and all work

performed under its authority and that neither City, County, nor Agency will defend or indemnify the Joint Powers Agency as to such work.

14. 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 Chico Urban Area.

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

a. 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.

b. 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.

c. 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.

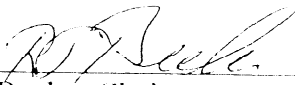
16. Enforcement. This Agreement shall be governed, construed, and interpreted according to the laws of the State of California, and any action to enforce the terms of this agreement shall be brought and tried in the County of Butte. Neither party shall file an action against the other party to compel 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 any action to enforce or interpret this Agreement shall recover reasonable attorneys' fees and costs from the party or parties that do not prevail.

17. Amendment. This Agreement may be amended only in writing and only after approval of all parties.

18. Effective Date. This Agreement is effective upon its execution.

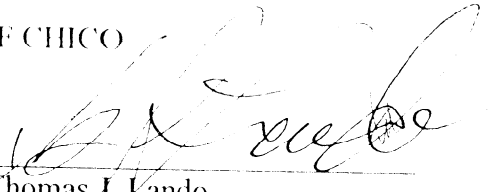
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COUNTY OF BUTTE

By 
R. J. Beeler, Chair
Butte County Board of Supervisors

Date: AUG 3 1 2004

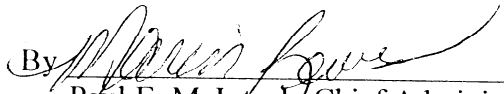
CITY OF CHICO

By 
Thomas J. Lando,
City Manager

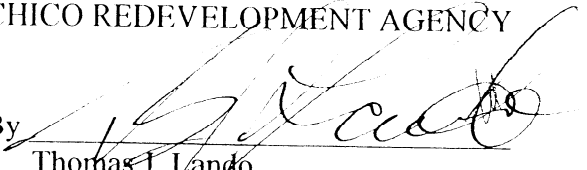
Date: AUG 0 2 2004

Authorized Pursuant to City Council
Minute Order No. 07-04,
Approved May 18, 2004

ATTEST:

By 
Paul E. McIntosh, Chief Administrative
Officer and Ex-Officio Clerk of the
Board of Supervisors

CHICO REDEVELOPMENT AGENCY

By 
Thomas J. Lando,
Executive Director

Date: AUG 0 5 2004

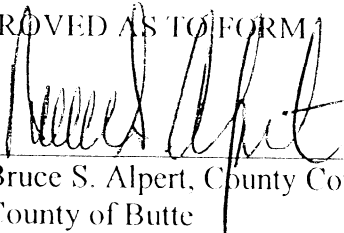
Authorized Pursuant to Chico
Redevelopment Agency
Minute Order No. 03-04,
Approved May 18, 2004

~~APPROVED FOR FISCAL CONTROL,
SUBJECT TO BUDGET APPROPRIATION~~


By Not Applicable
~~Butte County Auditor's Office~~

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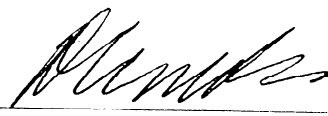
APPROVED AS TO FORM

By 
Bruce S. Alpert, County Counsel
County of Butte

APPROVED AS TO FORM

By 
David R. Frank, City Attorney
City of Chico

APPROVED AS TO FORM

By 
David R. Frank, Agency Counsel
Chico Redevelopment Agency