

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **MAY 8, 2012**

From: ~~DAVID~~ **JAMES DURFEE / BILL ZIMMERMAN**

Subject: **MID-WESTERN PLACER REGIONAL SEWER PROJECT: ADVANCE PAYMENT AGREEMENT FOR DESIGN AND ENVIRONMENTAL ANALYSIS**

ACTION REQUESTED / RECOMMENDATION: Staff recommends that your Board take the following actions with regard to the Mid-Western Placer Regional Sewer Project:

1. Adopt the attached Resolution authorizing the Chair to sign an Advance Payment Agreement with the City of Lincoln to provide advance payment in an amount not-to-exceed \$1,000,000 to fund design and environmental analysis of the Mid-Western Placer Regional Sewer Project.
2. Approve the attached Budget Revision transferring \$4,000,000 in appropriations from the SMD 1 Wastewater Treatment Plant Upgrade Capital Project Budget (Project 04835) to the SMD 1 Regional Sewer Capital Project Budget (Project 04828) for expenditures related to the Mid-Western Placer Regional Sewer Project.

BACKGROUND: On March 13, 2012, your Board accepted the offer from the City of Lincoln (Lincoln) to complete the Mid-Western Placer Regional Sewer Project (Project) and directed staff to negotiate the necessary agreements between Lincoln and potentially the City of Auburn for design and environmental review of the Project. County and Lincoln staff are working together to develop the Design and Environmental Review Agreement (DERA) and anticipate bringing the document to your Board for approval in June 2012. As identified in the Lincoln offer, the cost of completing the work included in the DERA is \$5,580,000 for an SMD 1 only project and \$6,633,000 for a project that serves both SMD 1 and Auburn.

The schedule included in Lincoln's offer shows completion of design and environmental review by March 2013 which will allow the County to preserve the State Revolving Fund financing terms acquired for the SMD 1 Wastewater Treatment Plant Upgrade Project (including \$6,000,000 of principal forgiveness). In order to maintain this schedule, staff has reallocated approximately \$300,000 in funding from an existing agreement with ICF to partially fund ongoing design and environmental work on the Project during negotiation of the DERA. Staff estimates that this reallocation will fund work through early May 2012. In order to fund the remainder of work until the DERA is presented to your Board for approval, staff has prepared the attached Advance Payment Agreement to provide advance payment to Lincoln in an amount not-to-exceed \$1,000,000 for design and environmental work included in Lincoln's offer. Under the terms of the Advance Payment Agreement, the County will reimburse Lincoln for work completed and the reimbursement amount will be credited against the cost of the DERA.

ENVIRONMENTAL CLEARANCE: Approval of the Advance Payment Agreement for design and environmental work for the Project is not considered a project under California Environmental Quality Act (CEQA Guidelines, Section 15378). Environmental review of the Project will be conducted concurrently with the design.

205

BOARD OF SUPERVISORS
MID-WESTERN PLACER REGIONAL SEWER PROJECT: ADVANCE PAYMENT FOR DESIGN AND
ENVIRONMENTAL ANALYSIS
MAY 8, 2012
PAGE 2

FISCAL IMPACT: The cost of the Advance Payment Agreement is an amount not-to-exceed \$1,000,000. Approval of the attached Budget Revision transferring \$4,000,000 in appropriations from the SMD 1 Wastewater Treatment Plant Upgrade Capital Project Budget (Project 04835) to the SMD 1 Regional Sewer Capital Project Budget (Project 04828) will provide adequate funding for this work.

ATTACHMENT: RESOLUTION
ADVANCE PAYMENT AGREEMENT
BUDGET REVISION

JD:BZ:KB:KK:LM

CC: COUNTY EXECUTIVE OFFICE

T:\FAC\BSMEMO2012\EE\REGIONAL SEWER LINCOLN FUNDING 2012 05 08.DOC

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

**In the matter of: A RESOLUTION AUTHORIZING
THE CHAIR TO EXECUTE THE ATTACHED
ADVANCE PAYMENT AGREEMENT WITH
THE CITY OF LINCOLN TO PROVIDE ADVANCE
PAYMENT TO FUND DESIGN AND ENVIRONMENTAL
ANALYSIS OF 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 on March 13, 2012, the Placer County Board of Supervisors voted to accept Lincoln's offer for the Mid-Western Placer Regional Sewer Project (Project); and,

WHEREAS the County and Lincoln are working together to develop the Design and Environmental Review Agreement for the Project; and,

WHEREAS, Lincoln and the County agree that in order to maintain the schedule proposed by Lincoln, it is desirable to provide for advance payment against Lincoln's offer to allow design work and environmental analysis to continue prior to approval of the Design and Environmental Review Agreement; and,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors, County of Placer, to authorize the Chair to execute the attached Advance Payment Agreement with the City of Lincoln in an amount not to exceed \$1,000,000 to fund design work and environmental analysis of the Project.

THIS AGREEMENT RELATING TO ADVANCE PAYMENT FOR THE MID-WESTERN PLACER REGIONAL SEWER PROJECT ("Agreement") is made as of the _____ day of _____, 2012, by and among the **COUNTY OF PLACER**, a political subdivision of the State of California (County) and the **CITY OF LINCOLN**, a California city and municipal corporation duly organized and existing under the laws of the State of California (Lincoln).

RECITALS

WHEREAS, the County and Lincoln wish to work cooperatively to plan, design, permit, finance, construct and operate regional wastewater collection, conveyance and treatment facilities to serve the County's Sewer Maintenance District 1 sewer service area; and,

WHEREAS, the parties 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 (the "SMD 1 Site"), a force main conveyance pipeline connecting to the existing City of Lincoln Wastewater Treatment and Recycling Facility on Fiddymont Road in Lincoln (the "Lincoln WWTRF"), and certain improvements to the Lincoln WWTRF (collectively the "Mid-Western Placer Regional Sewer Project-County Portion" or "County Portion of Project"), is in the public interest; and,

WHEREAS, on February 28, 2012, the Lincoln City Council gave direction to City staff to proceed with Lincoln's Project proposal with revised deal points as more fully described in the City of Lincoln staff report dated February 28, 2012 (the "Lincoln Offer"), all subject to further negotiation, documentation, and environmental review; and,

WHEREAS, on March 13, 2012, the Placer County Board of Supervisors voted to move forward with the County Portion of Project based on the Lincoln Offer while keeping open the option for the City of Auburn ("Auburn") to participate; and,

WHEREAS, the parties are working towards completion of a Design and Environmental Review Agreement (the "DERA") addressing initial design, permitting, funding, environmental review and related matters which the parties intend to bring to their respective legislative bodies for consideration later in 2012; and,

WHEREAS, the County desires to fund initial work on the County Portion of Project, as well as additional work to maintain the possibility of Auburn participating in the Project; and,

WHEREAS, the County has authorized funds for Stantec Consulting to initiate work included in the Lincoln Offer through an Agreement with ICF International (Task 20 of the ICF Agreement); and,

WHEREAS, the parties desire to continue certain initial design and environmental review activities for the County Portion of the Project as well as additional activities to maintain the possibility of Auburn participating in the Project while the DERA is being finalized, and further desire to arrange for certain initial advance payments to Lincoln to be credited against the cost of work included in the DERA; and,

WHEREAS, the parties wish to enter into a voluntary agreement memorializing their understanding and commitments regarding the matters addressed above.

AGREEMENT

NOW THEREFORE, the parties hereto agree as follows:

1. Lincoln and County agree to diligently and cooperatively work to negotiate the DERA and present the DERA to their respective legislative bodies for consideration as soon as possible, with a goal of presenting the DERA to the parties' respective legislative bodies by June 2012. Failure to meet the June 2012 goal shall not constitute a default under this Agreement;
2. During the pendency of DERA negotiations, County agrees to advance to Lincoln a sum not to exceed One Million Dollars (\$1,000,000) (the "Advance Payment") under the following terms and conditions:
 - a. Lincoln shall provide to County documentation of Project costs incurred together with all backup information including but not limited to, invoices, time sheets, and any and all documentation as may be required by the State Water Resources Control Board Clean Water State Revolving Fund financial assistance program. Each accounting shall include a statement from a duly authorized Lincoln representative indicating all work completed and invoiced was conducted in accordance with the Lincoln Offer provided, however, that the County shall not receive credit for any cost of work, if any, that is not included as part of the Lincoln Offer. Lincoln reserves the right to contest any work that it reasonably feels is not part of the Lincoln Offer;
 - b. Lincoln shall make payment requests not more frequently than every thirty (30) days;
 - c. All costs paid from the Advance Payment shall only be for tasks specifically included in the Lincoln Offer; provided, however, that the County shall not receive credit for any cost of work, if any, that is not included as part of the Lincoln Offer. Lincoln reserves the right to contest any work that it reasonably feels is not part of the Lincoln Offer;
 - d. Subject to the foregoing, the Advance Payment shall be deducted on a dollar for dollar basis from the cost of completing services included in the DERA.
 - e. County shall pay the requested sums to Lincoln within thirty (30) days of receipt of the written accounting and all backup documentation which meet the parameters delineated above. County agrees to make reasonable best efforts to expedite payments to the extent feasible.
3. It is also agreed that the County shall receive credit against the cost of work included in the DERA for all expenses incurred by the County under Task 20 – Interim Environmental and Design Services of the County's professional services agreement with ICF, as such contract may be amended, for work performed by Stantec on tasks included in the Lincoln Offer (the "ICF Costs"), provided, however, that the County shall not receive credit for any cost of work, if any, in Task 20 that is not included as part of the Lincoln Offer. County agrees to provide to Lincoln documentation of ICF Costs incurred, together with all

backup information, including but not limited to, invoices, time sheets, and related documentation.

4. This Agreement may be executed in 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.

5. The parties agree that this Agreement shall remain in full force and effect until superseded by the DERA or by other written agreement between the parties.

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: _____
Print Name: _____
Title: _____

APPROVED AS TO FORM:

BY: _____
County Counsel

ATTEST:

BY: _____
Clerk, Board of Supervisors

CITY OF LINCOLN

BY: _____
Print Name: _____
Title: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

