

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made this 15 day of July, 2008, by and between the City of Lincoln (hereinafter "City") and the United Auburn Indian Community (hereinafter "Tribe").

RECITALS

WHEREAS, the Tribe and the City have always enjoyed a unique and good relationship with each other;

WHEREAS, the City has supported the Tribe and the Tribe's construction of the Thunder Valley Casino ("Casino");

WHEREAS, the Tribe has generously supported both numerous civic organizations in the City and programs of the City;

WHEREAS, the Tribe has been a good neighbor to the City and has operated the Casino in a responsible manner;

WHEREAS, it is in the best interests of both the Tribe and the City that the Casino obtain sewer service from the City's wastewater facility;

WHEREAS, the City is diligently working on a project which will install a new sewer line from its new wastewater treatment plant to the southern part of Lincoln which will provide sewer service to the Casino; and

WHEREAS, the City would also like to provide water service to the Casino and is in the process of completing discussions with the Placer County Water Agency confirming that the City will provide water to the Casino.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, the parties agree as follows:

1. Sewer Service.

A. The City shall endeavor to install a gravity sewer line on or before October 31, 2009 that will enable the City to provide sewer service to the Casino from the City's new Wastewater Treatment and Reclamation Facility ("WWTRF") located on Fiddymont Road. City acknowledges that at the time of this Agreement, the City has obtained the necessary permits from the State Regional Water Quality Control Board and other permitting agencies for the WWTRF and that the WWTRF has sufficient capacity to receive the anticipated sewer flows from the Casino and the new Casino Hotel.

To insure that sewer service is available to the Casino prior to the opening of the new Casino Hotel, City agrees to accept on an interim basis sewer flows from the

Casino delivered to the City's WWTRF through a 12-inch temporary force main to be constructed by the Tribe from the Casino to the existing 66 inch manhole ("Manhole") located upstream of and currently connected to the head works of the WWTRF ("Temporary Force Main"). The connection from the Manhole to the head works shall remain in place until the Tribe connects to the City's gravity sewer line. The plans and specifications for the portion of the Temporary Force Main within the City limits that will connect to and include the Manhole shall be approved by the City, which approval shall not be unreasonably withheld. This Temporary Force Main connection will be designed, constructed and paid for by the Tribe. The Tribe, with City review and comment, agrees to design and construct the Temporary Force Main and ancillary facilities to mitigate for odor and peak flow constraints of the WWTRF.

Subject to Placer County approval, Tribe agrees to transfer ownership of this Temporary Force Main to the City when the City's gravity sewer line in Athens Road ("Gravity Line") becomes available. The Tribe shall connect to the City's Gravity Line when the Gravity Line becomes available. It is anticipated that an assessment district will be formed to help finance the cost of the Gravity Line ("Assessment District"). The Tribe's property north of Athens Avenue will not be a part of the Assessment District; however, the Tribe will fully participate in the proposed Assessment District on all Tribe owned property on the southside of Athens Avenue. As to the Tribe's property north of Athens Avenue, the Tribe will pay to City the Tribe's share of the cost of the Gravity Lane as reasonably determined by City, which shall be based on the estimated flows as shown in Exhibit A ("Tribe's Cost Share"). Tribe shall pay the Tribe's Cost Share to the City on or before ten (10) days before the sale of the bonds for the Assessment District. If construction of the Gravity Line has not commenced by June 1, 2011, the City shall return the Tribe's Cost Share to the Tribe with interest earned.

B. Tribe shall pay City the standard connection and sewer user fees that are charged to other similarly situated users adjusted annually for flows, biological oxygen demand (BOD), and total dissolved solids (TSS). Estimated connection fees and monthly service charges and service charge fee calculations are shown in Exhibit B. The Tribe and City acknowledge that the connection and sewer user fees that will be charged for the existing Casino will be different from the fees charged for the new Casino Hotel.

C. Tribe shall participate in the City's Fats, Oils and Grease Control Program and Industrial Discharge Program on the same terms as other similarly situated users.

2. Water Service:

A. City shall continue to use its best efforts to provide potable water service to the Casino as soon as possible.

B. When City water service is available to the Casino, and provided that Tribe elects, within its discretion, to connect to the City water system, Tribe will pay the standard City and Placer County Water Agency connection fees that similarly situated

users are assessed; however, Tribe will only pay for any additional Placer County Water Agency (PCWA) connection fees imposed upon City by PCWA for additional flows that are in addition to the connection fee previously paid by the Tribe to PCWA.

C. In the event that the Tribe elects to connect to the City's water system, Tribe shall pay City the standard water user fees that are charged other similarly situated users.

D. In the event that the Tribe elects to connect to the City's water system and if a reclaimed water line ("Reclaimed Water Line") is extended from Fiddymment Road to the Casino, Tribe shall pay its proportionate share of the cost for said line. Provided that ownership of the Temporary Force Main has been transferred to the City, Tribe shall receive a credit against the future reclaimed water component of the waste water PFE fee for the Tribe's cost in constructing the portion of the Temporary Force Main along Athens Road that is used as the Reclaimed Water Line ("Tribe's Credit"). When the Reclaimed Water Line is extended to the Casino, City shall provide the Casino with reclaimed water for landscape purposes. Tribe shall pay City the standard reclaimed water user fees that are charged to other similarly situated users.

In the event and to the extent that the amount of Tribe's Credit exceeds Tribe's PFE fees for the reclaimed water component, Tribe shall be entitled to reimbursement payment to be collected by City from benefitted third party landowners who agree to connect to the Reclaimed Water Line. The amount of reimbursement payment will be determined by City based on the third party landowner's respective prorata share as reasonably determined by City. City shall not be liable to Tribe for any reimbursement except from the payments received by the City from the third party landowners.

3. Ferrari Ranch Road/Highway 65 Interchange. The Tribe shall pay City Two Million Dollars (\$2,000,000) as a contribution toward the cost of the Ferrari Ranch Road/Highway 65 interchange. Such payment shall be made on or before the award of the construction contract for said interchange.

4. Twelve Bridges/Highway 65 Interchange. The Tribe shall pay City a contribution toward the cost of widening the Twelve Bridges interchange and bridge over Highway 65 from two lanes to four lanes, including signal improvements. Said cost will include planning, design, permitting and construction costs for said public improvements. The Tribe's contribution will be in an amount to be agreed upon by the City and the Tribe which reflects the Tribe's proportionate fair share of the costs of said public improvements based on a traffic study analyzing the Tribe's impacts upon those public improvements. Such payments shall be made no later than ten (10) days after the City publishes its "Notice to Bidders" for the construction of said public improvements.

5. Fiddymment Road. Tribe shall pay City a contribution for the cost of the widening of Fiddymment, between Moore Road and Athens Avenue, from two lanes to four lanes, including two bridges. The Tribe's contribution will be in an amount to be

agreed upon by the City and the Tribe which reflects the Tribe's proportionate fair share of the costs of said public improvements based on a traffic study analyzing the Tribe's impacts upon those public improvements. Such payment shall be made no later than ten (10) days after the date the City publishes its "Notice to Bidders" for the construction of the Fiddyment Road widening project.

6. Fire Protection. If the City is requested to provide mutual aid fire and/or emergency medical services to the Casino following the effective date of this MOU, the Tribe shall pay the City \$1,200 per call. Said amount shall be adjusted annually based on the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

7. Law Enforcement. If City is requested to provide mutual aide police service to the Casino following the effective date of this MOU, the Tribe shall pay the City the actual costs for such service as reasonably determined by the City. In addition, the Tribe shall pay the City Fifty Thousand Dollars (\$50,000) per year, payable on a quarterly basis, for the indirect costs which the Casino has on the City's Police Department. Said amount shall be adjusted annually based on the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

8. Promotion of Cultural, Social and Youth Activities. Both the Tribe and the City have mutual interest in promoting and supporting cultural, social and youth activities in the City. In addition to the Tribe's generous contributions to, and support of, community-based cultural, social, and youth activities in Lincoln, the Tribe shall contribute to the City \$50,000 annually to support city-sponsored youth recreational activities. Each payment will be due by July 1st of each year. Said amount shall be adjusted annually based on the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

9. Contribution to Western Placer Education Foundation Outdoor Learning Environmental Project. The Tribe shall contribute Fifty Thousand Dollars (\$50,000) towards the Western Placer Education Foundation Outdoor Learning Environment Project for the education of youth regarding Native American culture. Such payment shall be made on or before one (1) year of the effective date of this MOU.

10. Contribution for Lincoln Library. Tribe shall contribute to City Fifteen Thousand Dollars (\$15,000) for the Lincoln Library for use in development of a Native American book collection. Such payment shall be made within one (1) year of the effective date of this MOU. Thereafter, the Tribe shall contribute Five Thousand Dollars (\$5,000) annually payable on July 1, for use in developing, expanding and maintaining Native American and environmental book collections or other library related purposes as agreed to by the Tribe and the City. Said amount shall be adjusted annually based

on the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

11. Contribution for Economic Development. Both the Tribe and the City have an interest in maintaining and enhancing the economic vitality of the City of Lincoln, especially that area within the boundaries of the Redevelopment Agency of the City of Lincoln. To further improvement of this area, the Tribe will contribute \$50,000 a year to the City of Lincoln to be used in support of projects undertaken in this area. Said amount shall be adjusted annually based on the Consumer Price Index for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

12. Dispute Resolution.

A. Meet and Confer Process. In the event that the City or the Tribe believes that the other has committed a possible violation of the MOU, it may request in writing that the parties meet and confer in good faith for the purpose of attempting to reach a mutually satisfactory resolution of the problem within fifteen (15) days of the date of service of said request provided that if the complaining party believes that the problem identified creates a threat to public health or safety, the complaining party may proceed directly to arbitration as provided in Subsection E below.

B. Notice of Disagreement. If the complaining party is not satisfied with the result of the meet and confer process, the complaining party may provide written notice to the other identifying and describing any alleged violation of the MOU ("Notice of Disagreement"), with particularity, if available, and setting for the action to remedy the alleged violation.

C. Response to Notice of Disagreement. Within fifteen (15) business days of service of a Notice of Disagreement, the recipient shall provide a written response either identifying or admitting the allegation(s) set forth in the Notice of Disagreement, and, if the truth of the allegations is admitted, setting forth in detail the steps it has taken and/or will take to cure the violations. Failure to serve a timely response shall entitle the complaining party to proceed directly to arbitration, as provided in Subsection E below.

D. Expedited Procedure for Threats to Public Safety. If the City or the Tribe reasonably believes that in violation of this MOU the other's conduct has caused or will cause significant threat to public health or safety, resolution of which cannot be delayed for the time periods otherwise specified in this section, the complaining party may proceed directly to the Arbitration Procedures set out in Subsection E below, without reference to the Meet and Confer or Notice of Disagreement processes set out in Subsections A, B & C above, and seek immediate equitable relief. At least twenty-four (24) hours before proceeding in this manner, the complaining party shall provide to the other a written request for correction and notice of intent to exercise its rights under this subsection, setting out the legal and/or factual basis for its reasonable belief that there is a present or an imminent threat to public health or safety.

E. Binding Arbitration Procedures. Subject to prior compliance with the Meet and Confer process set out above in Subsection A, and the Notice and Response Process in Subsection B and C, and except as provided in Subsection D, either party may initiate binding arbitration to resolve any dispute arising under this MOU. The arbitration shall be conducted in accordance with the following procedures:

(1) The arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules.

(2) The arbitration shall be held in Sacramento, California, unless otherwise agreed. The arbitrator shall be empowered to grant compensatory, equitable and declaratory relief. The provisions of California Code of Civil Procedure section 1283.05 are incorporated into, and made a part of this MOU; provided however, that no discovery authorized by said section may be conducted without leave of the arbitrator, who shall decide to grant leave based on the need of the requesting party and the burden of such discovery in light of the nature and complexity of the dispute.

(3) 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.

(4) The resulting award shall be in writing and give the reasons for the decisions. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction hereof. The costs and expenses of the American Arbitration Association and the arbitrator shall be shared equally by and between the parties unless the arbitrator rules otherwise.

13. Judicial Review. The parties consent to judicial enforcement of any award in arbitration, which enforcement shall be in the Superior Court for Sacramento County.

14. Waiver of Tribal Sovereign Immunity. The Tribe agrees to waive its sovereign immunity in favor of the City solely as to any dispute which arises out of this Memorandum of Understanding or the activities undertaken by the Tribe, pursuant to the terms set forth herein for enforcement. The Tribe's governing body at the time of the Tribe's execution of this MOU shall execute a formal Resolution of Limited Waiver of Sovereign Immunity.

15. Attorneys Fees. In any arbitration or judicial action brought pursuant to the provisions of this Memorandum of Understanding, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs as are determined by the arbitrator or court.

16. Indemnification. The Tribe agrees to indemnify and defend the City, its agents or employees against any judicial or administrative claim brought or filed by any third party, including federal, state or local agencies, which challenges the validity of or

performance by city under this MOU, the authority of City to enter into this MOU, or any approval by City called for in this MOU.

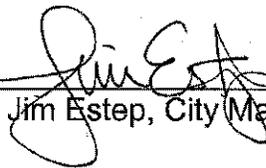
17. Termination. This MOU will continue until terminated upon mutual written agreement of the parties.

18. No Third Party Beneficiaries. This MOU is not intended to, and shall not be construed to create any right on the part of a Third Party to bring an action to enforce any of its terms.

IN WITNESS WHEREOF, the parties hereby execute and enter into this MOU with the intent to be bound through their authorized representatives whose signatures are affixed below.

City of Lincoln

By: _____


Jim Estep, City Manager

United Auburn Indian Community

By: _____

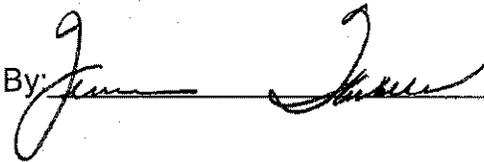


EXHIBIT A

TRIBES COST SHARE OF THE SOUTH LINCOLN REGIONAL SEWER PIPELINE

The existing Draft Engineers Report for the assessment district associated with the South Lincoln Regional Sewer (SLRS) shows a total project cost of \$40,830,108.99. Of this \$5,630,108.89 is associated with the cost of financing. The Tribe will not pay into the cost of financing for tribal property on the north side of Athens Avenue. Therefore the Tribe will only be participating in \$35,200,000.10 of the anticipated project costs.

The average day discharge for the Tribe is anticipated to be 550,000 gallons per day, or 2,183 equivalent dwelling units (EDU). Other participants in the pipeline are anticipated to total 8,958 EDU. With the Tribes participation the total will be 11,141 EDU.

The Tribes cost share for the project for the north side of Athens Avenue is:

$$(2,183/11,141) \times \$35,200,000.10 = \$6,897,190.58$$

On or before ten (10) days before the sale of the bonds for the Assessment District, the Tribe will pay \$6,897,190.58 to the City.

If at anytime in the future the average day flow over any 30 day period exceeds 550,000 gallons, the Tribe will purchase additional capacity in the SLRS per the "Rules" established in the Engineer's Report for financing of the SLRS.

EXHIBIT B

THE TRIBE SHALL PAY BOTH A TREATMENT CONNECTION FEE AND A MONTHLY OPERATION AND MAINTENANCE CHARGE.

TREATMENT CONNECTION FEE

The estimated treatment fee will be based on the following equation:

$$\text{EDU}^1 = (30 \text{ day discharge gallons}/7560) \times ((0.61 + ((\text{BOD}/267) \times 0.22)) + ((\text{TSS}/200) \times 0.17))$$

The cost of one commercial EDU is currently \$8,455. Of this \$1,945 is allocated to the regional collection system with \$6,510 allocated to treatment. Payment to the City shall be made before connection to the WWTRF. The cost per EDU will be based on the commercial wastewater connection fee rate at the time of payment.

As an example; if the Tribe discharges 16,500,000 gallons in a 30 day period, and the flow has an average BOD of 600 mg/l with a TSS of 250 mg/l the Tribes connection fee will be:

$$\begin{aligned} \text{EDU} &= (16,500,000/7560) \times ((0.61 + ((600/267) \times 0.22)) + ((250/200) \times 0.17)) \\ &= 2,182.54 \times (0.61 + (2.25 \times 0.22) + (1.25 \times 0.17)) \\ &= 2,182.54 \times 1.32 \\ &= 2,874.15 \end{aligned}$$

The fee would then be:

$$2,874.15 \text{ EDU} \times \$6,510 \text{ per EDU} = \mathbf{\$18,710,716.50}$$

Future capacity purchase will be per the above, and the "Rules" established in the Engineer's Report for financing of the SLRS. Fees will be based on the fee rate at the time of purchase. Payment for additional EDU will be paid by the Tribe within 30 days of receiving City invoice.

To monitor flow the Tribe will install, own and maintain a flow monitoring station (Station) that records total flow, instantaneous flow, average flow and peak flow. The Station shall be equipped to continuously transmit data via telemetry to the City WWTRF. All equipment shall be compatible with existing or planned City systems. The Station shall be designed for the secure installation and operation of portable sampling equipment. The Tribe shall provide the City with a Teledyne ISCO, Avalanche Sampler with a 14 bottle sequential sampling configuration. The equipment will be used for the periodic monitoring of BOD, suspended solids, and other flow constituents. Annual calibration of equipment shall be by an independent third party vendor. The City shall have direct 24 hour access to the Station.

¹ In no case shall the number of EDU be less than 30 day discharge gallons/7560

MONTHLY OPERATION AND MAINTENANCE CHARGE

The monthly operational cost shall be based on the total monthly discharge volume and the average BOD and TSS constituents. The fee will be based on EDU per the equation below. The cost of an EDU will be the then current cost of a standard residential monthly sewer service.

$$\text{EDU}^2 = (\text{discharge gallons}/7560) \times ((0.61 + ((\text{BOD}/267) \times 0.22)) + ((\text{TSS}/200) \times 0.17))$$

As an example; if the Tribe discharges 16,500,000 in any period, and the flow has an average BOD of 600 mg/l with a TSS of 250 mg/l the Tribes operational and maintenance fee will be:

$$\begin{aligned} \text{EDU} &= (16,500,000/7560) \times ((0.61 + ((600/267) \times 0.22)) + ((250/200) \times 0.17)) \\ &= 2,182.54 \times (0.61 + (2.25 \times 0.22) + (1.25 \times 0.17)) \\ &= 2,182.54 \times 1.32 \\ &= 2,874.15 \end{aligned}$$

The cost of an EDU is currently \$27.98, therefore the operational and maintenance cost will be:

$$2,874.15 \text{ EDU} \times \$27.98 \text{ per EDU} = \mathbf{\$80,418.72}$$

² In no case shall the number of EDU be less than 30 day discharge gallons/7560