

RESOLUTION 08-09

SEWERAGE COMMISSION - OROVILLE REGION

RESOLUTION DECLARING CAPACITY LIMITATIONS AND
ESTABLISHING DEVELOPER AGREEMENTS

WHEREAS, the Sewerage Commission-Oroville Region, hereinafter referred to as ("SC-OR") is a Joint Powers Entity formed and existing under that certain agreement titled **AMENDED & RESTATED JOINT EXERCISE OF POWERS AGREEMENT AMONG THE CITY OF OROVILLE, THE LAKE OROVILLE AREA PUBLIC UTILITY DISTRICT, AND THE THERMALITO IRRIGATION DISTRICT** (hereafter "**THE AGREEMENT**"), dated April 24,2002, approved by its three (3) member entities: (1) City of Oroville, (2) Lake Oroville Area Public Utility District, and (3) Thermalito Water and Sewer District; and,

WHEREAS, SC-OR owns, operates and maintains a 6.5 million gallon per day wastewater treatment plant pursuant to a National Pollutant Discharge Elimination System (NPDES) Permit #CA0079235 issued by the State of California Water Quality Control Board (SWQCB); and,

WHEREAS, each member entity owns, operates, and maintains a collection system for the delivery of sewage to the SC-OR wastewater treatment facility; and,

WHEREAS, each of the member entities has completed a survey of vacant lands within their current service boundaries, and have estimated the demand for wastewater collection and treatment by applying the densities as authorized by current zoning; and,

WHEREAS, SC-OR and the member entities have determined that, based on current acreage within their boundaries multiplied by authorized density per acre, the potential demand for wastewater treatment from development, measured in Equivalent Dwelling Units (EDU's) within the current service area boundaries of the three member entities (11,500 EDU's) exceeds the remaining available treatment capacity of SC-OR (2,800 EDU's); and,

WHEREAS, SC-OR has conducted and adopted the SC-OR Master Planning and Financial Assistance Study to estimate available treatment plant capacity, and has determined that it's existing capacity is not adequate to serve the development potential of lands heretofore annexed into the current jurisdictional boundaries of the SC-OR member entities. In addition, SC-OR has also experienced wastewater flows generated within the SC-OR member entities during storm events which have approached the total influent pumping capacity of 25 million gallons per day (mgd) available at SC-OR's wastewater treatment facility. Therefore, SC-OR has determined that its remaining capacity must be preserved for such in-fill development within the current jurisdictional boundaries of the member entities and that the member entities and SC-OR must place conditions applicable to lands seeking to annex into the member entities to insure that its existing remaining capacity is preserved for development within the member entities; and,

WHEREAS, in accordance with Paragraph 1 (b) of **THE AGREEMENT** member entities are entitled to add connections and to originate flows within their respective service areas without limitation subject to SC-OR's determination that its facilities may reach the limits of their capacity; and,

BE IT FURTHER RESOLVED that SC-OR, through its staff and consultants, is authorized hereunder to appear as necessary, in writing and in person, before such agencies and jurisdictions, including but not limited to Butte Local Agency Formation Commission, to advise of the status and limitations of SC-OR's capacity and to insure that all future annexations are undertaken consistently with the terms and condition of this Resolution.

BE IT FURTHER RESOLVED THAT SC-OR's member entities shall obtain the prior written agreement from SC-OR that treatment capacity exists prior to committing such capacity to any development seeking annexation into the member entities' jurisdictional boundary, or to any development within said jurisdictional boundary of twenty or more EDU's.

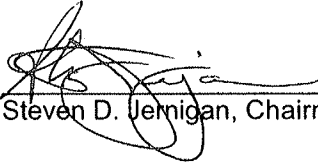
BE IT FURTHER RESOLVED that this resolution shall be effective on the date of its adoption and shall remain in effect until further action of SC-OR.

PASSED AND ADOPTED this 22nd day of July 2009 at a regular meeting of the Sewerage Commission-Oroville Region, duly noticed and conducted in the SC-OR offices, by the following vote:

AYES: Commissioners Dennis, Huston, Jernigan

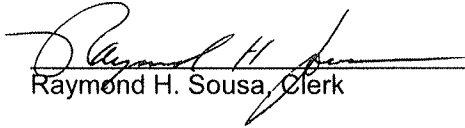
NOES: None

ABSTAINED: None



Steven D. Jernigan, Chairman

ATTEST:



Raymond H. Sousa, Clerk

EXHIBIT A

**CAPACITY AGREEMENT
BETWEEN _____ AND SEWERAGE COMMISSION -
OROVILLE REGION AND
_____ DEVELOPMENT COMPANY**

This Capacity Agreement is made and entered into this _____ day of _____, 200_, by and between the Sewerage Commission–Oroville Region ("SC-OR"), the _____ ("Collector") and _____, a _____ company ("Developer").

RECITALS

A. Developer is the owner of that certain parcel(s) of land, described in Exhibit A, attached hereto, which lands are within the political boundaries of Collector (the "Project Lands").

B. Collector is formed and exists under the provisions of _____ Code of the State of California, and operates a sewer collection system for the receipt and transmission of wastewater generated within its service area to the regional wastewater treatment facility ("WWTF").

C. SC-OR is a Joint Powers Authority ("JPA") formed under the provisions of 6500 et seq of the Government Code of the State of California, which has as its primary purpose the ownership and operation of the WWTF, including associated Interceptor Lines and an outfall line (collectively the "Regional Facilities") serving the members of the JPA, which members are _____ the _____, and the _____. The members of SC-OR shall hereafter be referred to collectively as "the SC-OR Members."

D. Developer wishes to undertake the development of the Project Lands, and for that reason desires to receive sewer collection service from Collector, and wastewater treatment service from the Regional Facilities.

E. SC-OR has conducted and adopted a study of available capacity and has determined, in Resolution No. 08-09, that its available capacity is substantially less than adequate to serve the full development of lands currently within the political boundaries of the SC-OR Members. In addition, SC-OR has also experienced wastewater flows generated within the SC-OR Members' service areas during storm events which have exceeded the capacity of a component of the Regional Facilities, and which flows have also approached the influent pumping capacity at the WWTF.

F. Collector requires extension and expansion of its collection system as needed in order to provide collection service for development of the Project Lands.

G. To provide for the orderly planning and construction of collection system capacity, landowners within Collector's boundaries seeking to develop are required to conduct, or provide funding to Collector to conduct, a site-specific study of the requirements for expansion/extension of Collector's system needed to serve proposed development. Due to the fact that the capacity

at the Regional Facilities is not adequate to serve development of all lands currently within the boundaries of the SC-OR Members, service by the Regional Facilities to developments of twenty (20) or more residential units, or to commercial/industrial users with equivalent wastewater flows, requires the completion of a site specific study to assess the impact of development on SC-OR's capacity and to determine whether any necessary expansion or other modification or improvement of capacity in SC-OR's Regional Facilities is required as a result of the development's impact. These studies, whether undertaken collectively or independently, shall hereafter be collectively referred to as "the Capacity Impact Study."

H. Developer wishes to enter into this agreement in order to secure completion of the Capacity Impact Study to assess the impact of the development of the Project Lands on the facilities of Collector and SC-OR, and to evaluate whether and to what degree adequate collection and Regional Facility capacity exists or must be constructed or financed to serve the Project Lands. If the Capacity Impact Study concludes that capacity must be expanded or installed to serve the Project lands, then, if Developer decides to proceed with development of the Project Lands, Developer will be required to negotiate agreement with SC-OR and Collector ("the Mitigation Agreement") that will describe what Developer will be required to do to receive sewer service for the Project Lands.

AGREEMENT

SEWER CAPACITY IMPACT STUDY:

SC-OR and Developer agree that SC-OR is unable to commit capacity to serve the Project Lands until completion of the Capacity Impact Study and until the construction, or financing, of all required expansion specified therein, and payment of all required fees. Such determination requires first the completion of the Capacity Impact Study in order to evaluate the Developer's Project, its location, and the likely impact on the capacity of the Regional Facilities. Prior to commencement of such study, SC-OR and Collector shall provide Developer an estimate of cost of the study for Developer's approval. If approved, said costs shall be deposited by Developer with Collector. Developer understands that no estimate of the availability of SC-OR's capacity can be provided until the study is complete, and the results thereof accepted by SC-OR in consultation with Developer. For service to industrial customers, the required Capacity Impact Study and its cost will be dependent on estimated loadings, and the cost and scope of the study will be determined on a case-by-case basis, depending on the user's wastewater characteristics, including flows. The Capacity Impact Study for the Regional Facilities shall be performed under SC-OR's supervision by SC-OR's consulting engineer. The study will analyze and confirm whether, and under what conditions, capacity can be made available to the Project Lands by SC-OR.

MITIGATION AGREEMENT:

(A) Following completion and acceptance of the Capacity Impact Study, if Developer decides to proceed with development of the Project Lands, and to secure wastewater collection and treatment service from SC-OR and Collector, they shall meet and negotiate the Mitigation Agreement, describing generally the required improvements, their timing, as well as their financing and construction, and all other requirements of SC-OR and Collector that Developer must complete prior to the receipt of service to the Project Lands. Without limiting the generality of the foregoing, the Mitigation Agreement will address the following requirements:

(1) Regional Facilities Construction/Financing The Mitigation Agreement will specify facilities that must be completed/financed by Developer prior to service. If the most financially and technically feasible expansion of the Regional Facilities requires the construction of more capacity than is required for the Project Lands, funding may be required from other developers. If no other developers are prepared to fund their respective shares of such capacity, and Developer wishes to proceed with its project, Developer may finance all such required expansion and fee credits and refunds to reimburse Developer for the costs of such excess capacity will be authorized in the Mitigation Agreement.

(2) SC-OR Capacity Fees. The Mitigation Agreement will set forth the Regional Facility Charge ("RFC") Developer will pay to SC-OR as a capacity fee to fund Developer's fair share of any capacity previously constructed, or to be constructed, in the Regional Facilities benefitting Developer's project and the time such payments must be made. The RFC shall be subject to fee credits if available to Developer.

(3) Sewer Collection System. The Mitigation Agreement will include the components of Collector's system that Developer must construct/finance as a condition of collector system service. Collector may require oversizing of certain components of its collection system consistent with the orderly expansion and planning of Collector's system. As with the Regional Facilities under subpart (1) above, if Developer installs or finances such excess capacity, the Mitigation Agreement will include Developer's entitlement to reimbursement from fee credits and refunds as described below.

(4) Collector Capacity Fees. The Mitigation Agreement shall set forth the capacity fee Developer shall pay to Collector prior to receipt of service, and the time of payment. Collector's capacity fees shall be subject to fee credits if available to Developer.

(5) Financing of Improvements. The Mitigation Agreement shall address the formation of any required special district financing mechanisms, including without limitation assessment districts, community facility districts, and improvement districts acceptable to Developer, SC-OR, and Collector.

(6) Fees and Charges: The Mitigation Agreement shall include provisions for payment of routine fees and charges of Collector and SC-OR for services provided.

(B) Fee Credits and Reimbursement. Developer may be entitled to a credit against the SC-OR RFC and/or the Collector sewer system capacity fees, up to the amount of Developer's expense, approved by SC-OR and Collector respectively, to construct any Regional Facilities and any collection system capacity that benefits other developers. Terms and conditions of fee credits and reimbursement will be subject to separate fee credit and reimbursement agreements to be negotiated between SC-OR and Developer, and Collector and Developer. Without limiting the generality of the foregoing, other development, using facilities funded by Developer shall be charged a fair share of the cost of such excess capacity, and such funds shall be set aside and refunded to Developer, and/or the costs of Developer shall be reimbursed with a credit to capacity fees payable by Developer on Developer's connections.

AVAILABILITY OF SERVICE:

Following completion of the Capacity Impact Study, and provided Developer enters into a Mitigation Agreement(s) with SC-OR and Collector, Collector and SC-OR will issue "Sewer Service Availability" letters for service from the Regional Facilities and in the sewer collection system, to the Developer. Service from Collector and SC-OR will be subject to compliance with the terms of the Mitigation Agreement. Service Availability Letters shall be effective for no more than 12 months, and are subject to renewal, provided Developer is in compliance with the terms of the Mitigation Agreement. Service Availability Letters do not guarantee Developer when that capacity in the WWTF will be available, but capacity therein will be provided as and when the required capacity is completed. Upon payment of required fees and issuance of a building permit, such capacity in the Regional Facilities will be provided to Developer.

Executed in Butte County, California this _____ day of _____ 200_.

DEVELOPER

SC-OR

COLLECTOR

EXHIBIT B

**PRE-ANNEXATION AGREEMENT
BETWEEN _____ AND SEWERAGE COMMISSION-
OROVILLE REGION AND
_____ DEVELOPMENT COMPANY**

This Pre-Annexation Agreement is made and entered into this ____ day of _____, 200_, by and between the Sewerage Commission–Oroville Region (SC-OR), the _____ (“Collector”) and _____, a _____ company (“Developer”).

RECITALS

A. Developer is the owner of that certain parcel(s) of land, described in Exhibit A, attached hereto, referred to hereafter as the “Project Lands.”

B. Collector is a _____ formed and existing under the provisions of _____ Code of the State of California, and operates a sewer collection system for the receipt and transmission of wastewater generated within its service area to the regional wastewater treatment facility.

C. SC-OR is a Joint Powers Authority (“JPA”) formed under the provisions of 6500 et seq. of the Government Code of the State of California, which has as its primary purpose the ownership and operation of a wastewater treatment facility (“WWTF”), including an associated outfall line and interceptor lines (collectively referred to as the “Regional Facilities”) serving the members of the JPA, which members are Lake Oroville Area Public Utility District, the City of Oroville, and the Thermalito Water and Sewer District. The members of SC-OR shall hereafter be referred to collectively as “the SC-OR Members.”

D. Developer wishes to undertake the development of the Project Lands, and for that reason desires to annex the Project Lands into the political boundaries of Collector in order to receive sewer collection service from Collector and wastewater treatment service from the Regional Facilities. Said annexation must be approved by Butte LAFCO, and Butte LAFCO is required to confirm that sewer collection and treatment will be available to the Project Lands.

E. SC-OR has conducted and approved a study of the available capacity in the Regional Facilities, and has determined in Resolution No. 08-09 that its available capacity is substantially less than adequate to serve full development of lands currently within the political boundaries of the SC-OR Members. In addition, SC-OR has also experienced wastewater flows generated within the SC-OR Members’ service area during storm events which have exceeded the capacity of one component of the Regional Facilities, and which flows have also approached SC-OR’s influent pumping capacity.

F. Collector has a sewage collection system that requires extension and expansion as needed to serve new development, such as the Project Lands.

G. SC-OR and Collector have advised the Butte Local Agency Formation Commission ("LAFCO") that annexation of lands into the service areas of the SC-OR Members should not proceed because the foregoing described capacity limitations constitute "service concerns" under Government Code 56857(d)(2). In order to mitigate said service concerns, applicants for annexation are required to perform a project specific study and, should applicants decide to complete said annexation and to develop their properties, to mitigate for all impacts of their proposed projects on the capacity of SC-OR's Regional Facilities and the SC-OR Members' systems prior to receiving service. Depending on the pace of development within the existing service areas of the SC-OR Members, it may be feasible to permit use of available SC-OR capacity to serve Developer, provided that planning and financing is in place to expand that capacity as needed to serve new lands while preserving capacity to serve development of lands already within the existing boundaries.

H. To determine whether adequate wastewater collection and treatment capacity exists or can be constructed to serve Developer's Project, a study, to be funded by Developer, must be performed of the impacts of development of the Project Lands on that capacity and of the requirements for expansion/extension of Collector's system and the preservation of, and any necessary expansion of, capacity in the Regional Facilities as required to serve Developer's Project. These studies, whether undertaken collectively or independently, shall hereafter be collectively referred to as "the Capacity Impact Study."

I. Developer wishes to enter into this Agreement in order to secure the study to allow SC-OR and Collector to advise LAFCO regarding the availability of capacity; to evaluate the sewer service requirements imposed by Developer's Project; and, to determine what collection and treatment capacity is available or must be constructed or financed to serve the Project Lands. Prior to receiving a letter confirming availability of service, Developer will enter into an agreement to fund or otherwise secure the installation of the collection system/Regional Facilities which the Capacity Impact Study demonstrates are necessary prior to receiving service from Collector and SC-OR.

J. Upon completion of the Capacity Impact Study and its acceptance by SC-OR and Collector, and following the negotiation and execution of an agreement (the "Mitigation Agreement") between Developer, SC-OR and Collector under which Developer will complete the measures set forth therein required to mitigate Developer's impact on available capacity, SC-OR and Collector will advise LAFCO that they will have available adequate capacity to serve the Project Lands and they have no service concerns regarding the annexation of the Project Lands into Collector's boundaries.

AGREEMENT

CAPACITY IMPACT STUDY:

SC-OR and Developer agree that SC-OR is unable to commit capacity to serve the Project Lands until completion of the Capacity Impact Study and until the construction, or financing, of all required expansion specified therein, and payment of all required fees. Such determination requires first the completion of the Capacity Impact Study in order to evaluate the Developer's Project, its location, and the likely impact on the capacity of the Regional Facilities. Prior to commencement of such study, SC-OR and Collector shall provide Developer an estimate of cost of the study for Developer's approval. If approved, said costs shall be deposited by Developer with Collector. Developer understands that no estimate of the availability of SC-OR's capacity can be provided until the study is complete, and the results thereof accepted by SC-OR in consultation with Developer. For service to industrial customers, the required Capacity Impact Study and its cost will be dependent on estimated loadings, and the cost and scope of the study will be determined on a case-by-case basis, depending on the user's wastewater characteristics, including flows. The Capacity Impact Study for the Regional Facilities shall be performed under SC-OR's supervision by SC-OR's consulting engineer. The study will analyze and confirm whether, and under what conditions, capacity can be made available to the Project Lands by SC-OR. Based on the results of that study, and provided Developer enters into the Mitigation Agreement as described below, Collector and SC-OR will withdraw from Butte LAFCO their service concerns to the proposed annexation.

MITIGATION AGREEMENT:

(A.) Following completion and acceptance of the Capacity Impact Study, if Developer decides to proceed with the annexation and to secure wastewater collection and treatment service from SC-OR and Collector, Developer, SC-OR and Collector shall meet and negotiate the Mitigation Agreement describing the required improvements and their financing and construction, and all other requirements of SC-OR and Collector that Developer must complete prior to the receipt of service to the Project Lands. Without limiting the generality of the foregoing, the Mitigation Agreement will address the following requirements:

(1) Regional Facilities Construction/Financing The Mitigation Agreement will specify facilities that must be completed/financed by Developer prior to service. If the most financially and technically feasible expansion of the Regional Facilities requires the construction of more capacity than is required for the Project Lands, funding may be required from other developers to finance said expansion. If other developers are prepared to fund their respective shares of such capacity, and Developer wishes to proceed with said financing, Developer may finance all such required expansion and fee credits and refunds to reimburse Developer for the costs of such excess capacity will be authorized in the Mitigation Agreement.

(2) SC-OR Capacity Fees. The Mitigation Agreement will set forth the Regional Facility Charge ("RFC") Developer will pay to SC-OR as a capacity fee to fund Developer's fair share of any capacity previously constructed, or to be constructed, in the Regional Facilities to serve Developer's project and the time such payments must be made. The RFC shall be subject to fee credits if available to Developer.

(3) Sewer Collection System. The Mitigation Agreement will include the components of Collector's system that Developer must construct/finance as a condition of collector system service. Collector may require oversizing of certain components of its collection system consistent with the orderly expansion and planning of Collector's system. As with the Regional Facilities under subpart (1) above, if Developer installs or finances such excess capacity, the Mitigation Agreement will include Developer's entitlement to reimbursement from fee credits and refunds as described below.

(4) Collector Capacity Fees. The Mitigation Agreement shall set forth the capacity fee Developer shall pay to Collector prior to receipt of service, and the time of payment. Collector's capacity fees shall be subject to fee credits if available to Developer.

(5) Financing of Improvements. The Mitigation Agreement shall address the formation of any required special district financing mechanisms, including without limitation assessment districts, community facility districts, and improvement districts acceptable to Developer, SC-OR, and Collector.

(6) Fees and Charges. The Mitigation Agreement shall describe the fees, charges, rules and regulations that are applicable to Collector and SC-OR service.

(B.) Fee Credits and Reimbursement. Developer may be entitled to a credit against the SC-OR RFC and/or the Collector sewer system capacity fees, up to the amount of Developer's expense, approved by SC-OR and Collector respectively, to construct any Regional Facilities and any collection system capacity that benefits other developers. Terms and conditions of fee credits and reimbursement will be subject to separate fee credit and reimbursement agreements to be negotiated between SC-OR and Developer, and Collector and Developer. Without limiting the generality of the foregoing, other development, using facilities funded by Developer shall be charged a fair share of the cost of such excess capacity, and such funds shall be set aside and refunded to Developer, and/or the costs of Developer shall be reimbursed with a credit to capacity fees payable by Developer on Developer's connections.

AVAILABILITY OF SERVICE:

Following completion of the Capacity Impact Study, and provided Developer enters into a Mitigation Agreement(s) with SC-OR and Collector, Collector and SC-OR will issue "Sewer Service Availability" letters for service from the Regional Facilities and in the sewer collection system, to the Developer. Service from Collector and SC-OR will be subject to compliance with the terms of the Mitigation Agreement. Service Availability Letters shall be effective for no more than 12 months, and are subject to renewal, provided Developer is in compliance with the terms of the Mitigation Agreement. Service Availability Letters do not guarantee Developer when that capacity in the WWTF will be available, but capacity therein will be provided as and when the required capacity is completed. Upon payment of required fees and issuance of a building permit, such capacity in the Regional Facilities will be provided to Developer.

Executed in Butte County, California this _____ day of _____ 200__.

DEVELOPER:

_____, a
_____ corporation

Date: _____

By: _____

Name: _____

Title: _____

COLLECTOR:

a governmental agency

Date: _____

By: _____

Name: _____

Title: _____

SC-OR:

SEWERAGE COMMISSION-OROVILLE REGION

Date: _____

By: _____

Name: Raymond H. Sousa

Title: Manager