



**STAFF REPORT
TOWN COUNCIL MEETING OF NOVEMBER 12, 2014
CONSENT AGENDA**

TO: HONORABLE MAYOR AND MEMBERS OF THE TOWN COUNCIL
FROM: BRIAN FRAGIAO, DIRECTOR OF PUBLIC WORKS *[Signature]*
DATE: OCTOBER 31, 2014
RE: MEMORANDUM OF UNDERSTANDING (MOU) COVERING THE PLACER COUNTY REGION FOR JURISDICTIONAL COST SHARING OF CERTAIN PORTIONS OF THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II PERMIT PROGRAM

Recommendation:

Staff recommends the Town Council adopt the resolution authorizing the Town Manager to sign the Memorandum of Understanding (MOU) for Cost Sharing opportunities covered under the National Pollutant Discharge Elimination System (NPDES) Phase II permit program (See Attachment A).

Issue Statement and Discussion

The Town of Loomis is required by state and federal law to have coverage under the General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems (MS4s) (the Phase II Permit) that is issued by the State Water Resources Control Board. The Phase II Permit requires the Town to develop and implement an extensive storm water program that has the following major elements: program management, education and outreach, public involvement and participation, illicit discharge detection and elimination, construction site storm water runoff control, pollution prevention and good housekeeping, post construction storm water management, water quality monitoring, and program effectiveness and improvement. The Phase II Permit went into effect on July 1, 2013 and will be in effect for five years. The Phase II Permit requires specific tasks to be implemented during each year of Phase II Permit implementation; the Town is currently in Year 2 of implementation.

In order to reduce the cost associated with implementation, the entities within Placer County (including the Town of Loomis, Cities of Lincoln, Rocklin, Roseville, Auburn, and Placer County) have come together to allow for joint development and implementation of some of the Phase II Permit requirements. Part of this coordination effort included the development of a MOU for Cost Sharing of Certain Portions of the Municipal Small Separate Storm Sewer System Phase II Program. The MOU establishes a cost sharing mechanism that could be applied to future group projects. Examples of some of the types of projects that may be developed by the joint effort under the MOU include: public education and outreach materials, development and implementation of training, and the development of design standards.

The cost sharing mechanism outlined in the MOU is population based (as determined by the U.S. Census Bureau 2010 Census). Cost sharing determination for a specific project would be based upon each entity's percentage of the total population of the project's participating entities. The MOU does not commit the Town to any specific project and as such, the Town will have the option, on a

project by project basis, to determine whether or not to participate in any specific project developed and implemented by the regional storm water group. Any commitment of funding, for any specific project, would be required to comply with the Town's ordinance and funding availability.

Being a signatory to the MOU will not only provide the Town opportunities to reduce cost associated with Phase II Permit compliance, but will also demonstrate the Town's commitment to addressing storm water quality on a regional basis; which is encouraged by the Regional Water Quality Control Board (the regulatory authority for the Permit implementation).

CEQA Requirements

Approval of the MOU is not considered a project under Section 21065 of the Public Resources Code, and is therefore exempt from CEQA review.

Financial and/or Policy Implications

The operational costs of the Town's Stormwater Program are a general fund expense. Participation within this MOU will reduce the cost to the Town's general fund by sharing the cost for certain elements of the State Permit with our neighboring jurisdictions. Expenses for any and all work programs will either be made part of the Town's annual budget or be brought to Council for approval.

TOWN OF LOOMIS

RESOLUTION NO. 2014-

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AUTHORIZING THE TOWN MANAGER TO SIGN THE MEMORANDUM OF UNDERSTANDING (MOU) COVERING THE PLACER COUNTY REGION FOR JURISDICTIONAL COST SHARING OF CERTAIN PORTIONS OF THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PHASE II PERMIT PROGRAM

WHEREAS, the United States Environmental Protection Agency (EPA) promulgated rules under authority of the Clean Water Act establishing the National Pollutant Discharge Elimination System storm water program for operators of municipal storm drainage systems; and

WHEREAS, the California State Water Resources Control Board adopted the General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems (MS4s) (the Phase II Permit) which became effective July 1, 2013 to comply with the Clean Water Act; and

WHEREAS, the Town of Loomis applied for and obtained coverage under the Phase II Permit; and

WHEREAS, the Phase II Permit requires the Town to implement and comply with the requirements of the Phase II Permit; and

WHEREAS, Town staff worked in conjunction with the Cities of Auburn, Rocklin, Lincoln, Roseville, and Placer County to develop the Memorandum of Understanding (MOU) for Cost Sharing of Certain Portions of the Municipal Small Separate Storm Sewer System Phase II Program; and

WHEREAS, Town staff determined that being a party to the MOU for Cost Sharing of Certain Portions of the Municipal Small Separate Storm Sewer System Phase II Program will benefit the Town by a mechanism to achieve common storm water goals and reduce Phase II Permit implementation costs; and

WHEREAS, Town staff recommends that Town Council of the Town of Loomis authorize the Town Manager to sign the MOU for Cost Sharing of Certain Portions of the Municipal Small Separate Storm Sewer System Phase II Program.

NOW, THEREFORE BE IT RESOLVED:

The Town Council of the Town of Loomis does hereby authorize the Town Manager to sign the Memorandum of Understanding for Cost Sharing of Certain Portions of the Municipal Small Separate Storm Sewer System Phase II Program.

PASSED AND ADOPTED this 12th day of November, 2014:

AYES:

NOES:

ABSENT:

Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

Attachment A

**MEMORANDUM OF UNDERSTANDING
FOR COST SHARING OF CERTAIN PORTIONS OF THE
MUNICIPAL SMALL SEPARATE STORM SEWER SYSTEM
PHASE II PROGRAM**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered this _____ day of _____, 2014, by and between the following public agencies, (referred to individually as "Party" and collectively as "Parties");

Placer County, a political subdivision of the State of California;
City of Roseville, a municipal corporation of the State of California;
Town of Loomis, a municipal corporation of the State of California;
City of Lincoln, a municipal corporation of the State of California;
City of Auburn, a municipal corporation of the State of California;
City of Rocklin, a municipal corporation of the State of California.

RECITALS

WHEREAS, the California State Water Resources Control Board adopted the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Water Quality Order # 2013-0001-DWQ, Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) (the Storm Water Permit (SWP)) on February 5, 2013; and

WHEREAS, each Party has applied for separate coverage under the SWP and has expressed intent to comply with the SWP; and

WHEREAS, the Parties understand the benefit of group participation in the implementation of certain elements of the SWP to achieve common goals and to reduce project implementation costs; and

WHEREAS, each Party remains solely responsible for its respective compliance with the SWP.

NOW THEREFORE, the Parties hereto agree as follows:

Section 1 – Participation

Participation in a particular shared work program relative to the fulfillment of an element of the SWP will be at the will and direction of the individual Party. Work programs are defined as the collaborative efforts of the participating parties to mutually benefit each in the fulfillment of individual permit requirements. Each work program will address a specific section of the SWP and include a scope of work that includes the work plan objective, the proposed outcome, a schedule for completion, and a preliminary cost estimate. All costs associated with group efforts will be shared on a pro-rata basis, pursuant to Section 4, below. A decision to participate in a group activity does not relieve any individual Party from the fulfillment of its respective SWP requirements. Suggested group activities will be presented by the Steering Committee which will identify costs and potential cost savings.

Section 2 - Steering Committee

The Parties shall establish a Steering Committee consisting of one representative for each Party. The purpose of the Steering Committee is to identify SWP implementation requirements common to the Parties, where each individual Party will benefit and take

credit within their own permit for action taken by the group, and to establish work programs to complete common tasks. At a minimum, the Steering Committee shall meet on a quarterly basis to review SWP annual obligations, identify elements of joint interest, assess cost benefits of joint participation, and review historical action taken by the Parties to identify successes and program improvements, and present programs or plans to comply with SWP requirements.

Section 3 - Duties of the Steering Committee / Participation

The Steering Committee will provide an open forum for SWP discussions related to each Party and will provide guidance relative to the implementation of the activities subject to this MOU. The responsibilities and activities of the Steering Committee include, but are not limited to the following:

- Oversight of MOU implementation;
- Resolution of issues and disputes regarding this MOU;
- Development, management, and designation of activities subject to this MOU; and
- Management of financial obligations relative to the MOU.

The Steering Committee will provide recommendations to the Parties for individual work programs to address permit requirements. Work programs will address elements of the SWP common to each Party. Steering Committee project recommendations are not binding upon any Party and each Party retains complete control over which recommendations, if any, to adopt.

For each recommended work program, the Steering Committee will identify a Project Administrator. The Project Administrator will be responsible for oversight and coordination of group activities, scheduling tasks and meetings, administration of professional contracts, and coordination with the State and Regional Water Boards. The responsibility or assignment of the Project Administrator position will rotate between Parties depending on the Work Program. The Project Administrator shall not be held liable for the administration of a work program.

Prior to the implementation of any work program, an offer to participate will be made in writing to all Parties. Each proposed work program shall be presented in writing and shall include the following:

- A cost estimate / cost savings estimate.
- The name of a proposed Party to serve as the "Project Administrator" (and the duties and responsibilities of the Project Administrator); and
- The proposed cost share percentages, as described in Section 4 below.

Once an offer to participate in a particular work program is presented, each Party will have thirty (30) days to either accept or decline participation in writing. Failure to respond will be construed

as a notice to decline. Acceptance shall mean that the participating Party is committing to payment of its fair share of the estimated cost and expenses related to the work program, along with its participation in group activities to complete the work program. All work programs will be group activities and each Party will commit to the ongoing efforts to complete the tasks as identified by the Project Administrator.

Section 4 - Cost Sharing

It is understood that all work programs are considered group activities and each participating Party is committing the resources of its staff to help facilitate discussions and work efforts and tasks as may be assigned by the Project Administrator.

Actual costs for outside services and materials shall be shared between participating Parties on a pro-rata basis as a percentage of population to the combined population of the participating Parties. The population of a Party's NPDES SWP area is determined by using the 2010 Local Census Data for the Phase II SWP Areas. Only the populations within the permit areas have been counted, as shown below;

PARTY	2010 CENSUS
Auburn	13,330
Lincoln	42,819
Loomis	6,430
Rocklin	56,974
Roseville	115,781
Placer County	68,777

If a Party elects not to participate in a particular Work Program, that Party shall not be responsible for the costs and expenses associated with that particular Work Program, nor shall they report to the Water Resources Control Board that the results or benefits of that Work Program are applicable to the fulfillment of their individual SWP obligations.

Work Program cost estimates shall include, but not be limited to the following;

- Consultant Services
- Shared Equipment
- Special Programs or Events
- Workshops and Training
- Development and Printing Costs for Public Information and Outreach Materials, School Curriculum, or Standards Manuals

Each Party shall have a designated and duly authorized signatory to accept the responsibilities and cost obligation associated with participation in a Work Program.

Prior to the start of work for a particular Work Program, each participating Party shall submit to the Project Administrator a deposit in the amount of 50% of its pro-rata share based on the prepared cost estimate. As work program costs accrue, additional deposits may be required. Additional deposits will be payable within 30-days of request from the Project Administrator. At any time, any participating Party can request an accounting of the monies spent from the Project Administrator. At the conclusion of each Work Program, the Project Administrator shall assess final costs and bill the Parties for any amount due, or refund their fair share of deposits. Final costs will be payable within 30-days. Final close out documents will include the following:

1. The original invoice for the shared costs;
2. Copies of all relevant invoices from vendors or consultants; and,
3. Copies of contracts, proposals, agreements and other documents setting forth the conditions and specifications for the item of work or product delivered.

Each Party understands and agrees that any internal costs or expenses incurred by a Party shall be the sole responsibility of that Party unless otherwise approved for payment as a shared cost item by the Steering Committee.

Section 5 - Additional Parties

From time to time and with majority written approval of the Parties subject to this MOU, additional Parties may be added to this MOU. As this occurs all new Parties shall agree to the terms and execute this MOU. Section 4 shall be amended accordingly to accurately reflect the percentage of shared costs for each Party.

Section 6 - Execution

This MOU may be executed by the Parties in separate counterparts and pdf of facsimile signatures may be accepted and treated as originals..

Section 7 - Amendments

This MOU can only be amended in writing with all parties signatory to the amendment.

Section 8 - Term / Termination

This MOU shall have a term of five (5) years effective on the date signed by the Parties. However, except in the case where any Party has committed to an active work program, a Party may terminate its further involvement and obligations under this MOU by giving thirty (30) days written notice to the other Parties. Each Party shall be responsible for its share of costs

incurred through the final termination date.

Section 9 – Notices

Any notices to parties required by this MOU shall be delivered personally or mailed, U.S. first class, postage prepaid, addressed as follows:

The City of Roseville Development Services
Stormwater Program
311 Vernon Street
Roseville, CA 95661

The Town of Loomis
3665 Taylor Road
Loomis, CA 95650

Attn: Community Development Director
The City of Lincoln
600 Sixth Street
Lincoln, CA 95648

The City of Auburn
1225 Lincoln Way
Auburn, CA 95603

The City of Rocklin
Public Services Department
4081 Alvis Court
Rocklin, CA 95677

Placer County
Department of Public Works
Stormwater Quality
3091 County Center Drive, Ste 220
Auburn, CA 95603

Any Party can amend its address for notice by notifying the other Parties in writing.

Section 10 - Severability

If any of the provisions contained in this MOU is for any reason held invalid or unenforceable,

such holding shall not affect the remaining provisions or the validity and enforceability of the MOU as a whole.

Section 11 - Access to Records

Duly authorized representatives of all Parties shall have right of access during normal business hours to all other Parties' files and records relating to the services performed hereunder, and may review the files and records at appropriate stages during performance of the services.

Section 12 - Integrated Agreement

This is an integrated agreement, and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.

Section 13 – Venue and governing Law

Venue; Governing Law. Any action arising out of this MOU shall be brought in Placer County, California, regardless of where else venue may lie. This MOU shall be governed by and construed in accordance with the laws of the State of California.

Section 14 – Mutual Indemnity

It is understood and agreed that, pursuant to Government Code §895.4, that all parties to this Memorandum of Understanding agree to defend, indemnify and save harmless all other parties to this agreement, including their officers, employees and volunteers, from all claims, suits, or actions every nature, kind and description brought for or on account of injury (as defined in Government Code §810.8) occurring by reason of anything done or omitted to be done by the indemnifying party under this Memorandum of Understanding.

Section 15 – Third Parties

Nothing within the provisions of this Memorandum of Understanding is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of any party to this Agreement by imposing any standard of care with respect to the subject of this Agreement and nothing in this Agreement shall be construed as a waiver of any available defense or immunity available to any party.

Section 16 - General Provisions

A. The duly authorized signatories represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOU on behalf of the respective Parties.

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

B. Each Party understands and agrees that there is no agency relationship between the Parties. It is further understood and agreed by the Parties that any persons employed by each Party shall be entirely and exclusively under the direction, supervision, and control of the employing Party, and that the individual Parties are solely responsible for compliance with the SWP within their respective jurisdiction.

CITY OF ROSEVILLE

By: _____
Its: City Manager

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney

COUNTY OF PLACER

By: _____
Its: Director of Public Works

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney

CITY OF ROCKLIN

By: _____
Its: City Manager

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney

CITY OF LINCOLN

By: _____
Its: City Manager

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney

TOWN OF LOOMIS

By: _____
Its: Town Manager

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney

CITY OF AUBURN

By: _____
Its: Director of Public Works

DATE _____

APPROVED AS TO FORM:

By: _____
Its: Attorney