

**Executive Summary of
Construction, Operations and Joint Exercise of Powers Agreement**

This executive summary provides a high-level summary of the most significant aspects of the proposed Construction, Operations and Joint Exercise of Powers Agreement (COJA), but see the attached draft COJA for detailed contractual language and the defined terms used here.

1. Background. In February 2012, Lincoln made an updated offer to Placer County to construct and operate a project that would treat SMD 1 customers' wastewater at the Lincoln treatment facility, and the Board directed County staff to pursue the offer in March 2012. In August 2012, the Parties executed the DERA, which provided for Lincoln's design, environmental review, permitting, and land/easement acquisition for the Project. The COJA is the follow-on agreement that provides for the construction and operations of the Project.

2. Financing. The County will enter a financing agreement with the State Water Board under its Clean Water State Revolving Fund (SRF) program, with a 30 year repayment, estimated 1.9% interest, and \$6M in principal forgiveness. The loan application requires the executed COJA and Lincoln having secured all necessary permits.

3. County's Financial Obligations – Construction Phase

a. Capital Costs. The COJA enumerates the categories of Lincoln's construction phase costs for which County will be responsible, including: (1) design, environmental review, permitting, easement/land acquisition; (2) construction; (3) construction management; and (4) Allowable Staff Costs. County must pay all undisputed Capital Costs per the COJA's terms, even if they exceed the Capital Charge.

b. Capital Charge. The COJA provides for a metric called the Capital Charge against which the aggregate Capital Costs are measured at Project Final Completion to determine whether and how much Oversizing Payment is generated. The Capital Charge may be adjusted for County design changes, County-responsible delays, certain County damages not paid by Lincoln, and, to a limited extent, Differing Site Conditions.

c. Capital Contingency/Oversizing Contingency. The Capital Contingency is to address unanticipated costs, including Differing Site Conditions. If the Capital Contingency is used up, then the Oversizing Contingency (equal to the amount originally estimated in the Capital Charge for the Oversizing Payment) is used. Neither contingency is available to pay for County Changes.

d. Oversizing Payment. An Oversizing Payment is generated to the extent the aggregate Capital Costs are less than the Capital Charge at Project Final Completion. If sufficiently large, the Oversizing Payment will be limited per COJA terms.

e. Paying Agent Provisions. Per COJA terms, the County Treasurer will act as the Paying Agent to make payments on behalf of Lincoln to Lincoln's designers, CM, contractors, and other payees, as well as to pay Lincoln for certain Allowable Staff Costs.

4. County's Financial Obligations – Operations Phase

a. Operations Charge. During the Operations Period, County will pay the Operations Charge to Lincoln quarterly for treating the SMD 1 wastewater. The charge is set at a 2011 base year at a base cost of \$24/month/EDU, and is annually adjusted based on the average percentage change in the total operations costs of a basket of comparable facilities. Also, for 10 years County will reimburse the cost of a specified amount of replacement water to Rock Creek.

b. Funding Repair & Rehabilitation (R&R) Projects. The COJA identifies each agencies funding obligations for R&R projects. In addition, the COJA identifies Lincoln's obligation to

cover the amount of R&R funding needed from the opening of the Lincoln treatment plant in 2004 until 2015. Costs of R&R Projects are allocated as follows:

- i. Routine Repair is solely allocated to Lincoln;
- ii. R&R Projects for the Lincoln plant and Lincoln pipelines downstream of the Junction Structure are funded based on a formula in the COJA that is keyed to the EDUs of connected customers for each party and Lincoln's past R&R obligation.
- c. Funding Expansion Projects. Each party is solely responsible for setting and collecting the actual connection fees for its own customers, which must cover at least the applicable connection fee charges shown in the Connection Fee Report attached to the COJA. Costs of Expansion Projects are proportionately allocated to the parties based on the amount of additional capacity each receives from the project.

5. Major Risks and Mitigating Provisions

a. Project Delays. The COJA addresses the risk of delay through the following provisions:

- i. Project Schedule. Lincoln will be responsible to meet certain key milestones stated in the COJA by the required dates, as may be adjusted for County-responsible delays.
- ii. Recovery Plans. Lincoln will notify County within 5 days of delays, then submit a recovery plan for County's approval. To the extent there is a delay caused by County's failure to perform, and Lincoln has provided the required notice, then Lincoln will be entitled to an extension of the applicable Project Completion Dates and potentially of the Capital Charge, which will be Lincoln's sole remedy for County's delays.
- iii. Delay Damages. County waives all damages against Lincoln for Lincoln-responsible project delays except for the following items that Lincoln is responsible for:
 - (1) Regulatory fines/penalties after the Treatment Completion Date (8/31/15) due to noncompliance of County's SMD 1 wastewater;
 - (2) The interest accrued on the SRF loan between the Project Final Completion Date (3/31/16) and the date when Project Final Completion actually occurs;
 - (3) Additional costs incurred by County for its construction-related consultants and outside advisors for the longer project; and
 - (4) The difference between (1) the additional costs paid by County in continuing to operate SMD 1 after the Treatment Completion Date and (2) the Operations Charge County would have paid during that period.

b. Cost Overruns. Regarding the risk of cost overruns, note the following COJA provisions:

- i. Oversizing Contingency. Lincoln has put up their desired Oversizing Payment as contingency for the Project, which gives them some "skin in the game." In addition to the conventional uses of contingency, the Construction Contingency and Oversizing Contingency will be used on a first dollar basis for Differing Site Conditions.
- ii. Monthly County Review. County reviews Lincoln's payment applications monthly and can dispute charges that are not reimbursable as Capital Costs.
- iii. Independent Auditor. The COJA requires an Independent Auditor to audit the Capital Costs, with quarterly "spot" audits and annual complete audits.
- iv. Termination. For worst case scenarios, County may terminate the COJA. Termination requires a determination of the Board that Project is impracticable or no longer in County's best interests. County would still need to pay amounts due prior to termination.

c. Third Party Claims

i. Insurance. The COJA has insurance requirements for Lincoln, County and Lincoln's designers & contractors to protect against certain third party claims.

ii. Indemnity. Per COJA terms, Lincoln is required to defend and indemnify County from claims and damages arising out of the acts or omissions of Lincoln and those for whom it is responsible, provided Lincoln is not required to indemnify anyone to the extent of that person's own active negligence. COJA also provides special Lincoln indemnities for contractor claims, prevailing wage claims and developer claims. County will defend and indemnify Lincoln from claims and damages arising out of County's active negligence on the Project, but not for Lincoln's own active negligence.

iii. Pass-through Requirements to Contractors. COJA requires Lincoln to put certain protective provisions in its Project contracts, including indemnities and insurance.

d. Failure to Perform

i. Default. If Lincoln fails to timely cure a Material Default, then COJA provides County with these potential remedies, without limitation: (1) County taking over the project and charging Lincoln with those costs allowed under COJA; or (2) obtaining a judicial order for specific performance of the COJA.

ii. Dispute Resolution. COJA provides for an escalating dispute resolution process that starts with informal efforts by the Authorized Representatives, followed by a meeting of Senior Executives, the possibility of having an Independent Expert provide a recommended solution, and then mediation. If a dispute is not resolved after mediation, then Parties are free to litigate. For critical path issues, low dollar issues and disputes over County withholding, the COJA has an expedited resolution process involving a quick hearing before a Project Neutral, whose decision is only binding until Project Final Completion.

e. Future Treatment Capacity

i. Claiming Uncommitted Capacity. For the 1st year after Treatment Substantial Completion, Lincoln will reserve an additional 0.4 MDG average dry weather flow of capacity for County to purchase at the connection fees specified in the COJA. After that, unreserved capacity is available on a first-come, first-served basis.

ii. Expansion Projects. Lincoln agrees to perform Expansion Projects requested by County, with County's collaboration in planning for it. County may undertake an expansion project at County's sole cost except as otherwise provided in COJA if Lincoln fails to timely undertake an Expansion Project reasonably requested by County or enter into an agreement with County for the project. Added capacity built for County is reserved for County exclusively.

6. Governance. Each party will designate an Authorized Representative to make decisions under the COJA. Each Authorized Representative is responsible for obtaining any needed prior authorization from the BOS/City Council when applicable. The parties will work together through a Project Coordination Team (PCT). Lincoln operates the Project during the first 5 years after completion, subject to certain rights of County. After initial 5 years, Lincoln continues to operate the Project, subject to certain rights of County, and subject further to oversight by an "Oversight Committee" consisting of two members of each Party's Board or Council, with certain listed Major Decisions requiring approval of both the BOS and City Council.