

**CONSTRUCTION, OPERATIONS AND JOINT
EXERCISE OF POWERS AGREEMENT**

by and among

COUNTY OF PLACER

and

CITY OF LINCOLN

made as of

_____, 2013

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Construction, Operations and Joint Exercise of Powers Agreement

THIS CONSTRUCTION, OPERATIONS AND JOINT EXERCISE OF POWERS AGREEMENT ("Agreement") is made as of the ____ day of _____, 2013, by and among the COUNTY OF PLACER, a political subdivision of the State of California ("County") and the CITY OF LINCOLN, a city duly organized and existing under the laws of the State of California ("Lincoln").

Preamble

Following an offer made by Lincoln to the County for the construction of the Lincoln-County Project, the County and Lincoln are now entering into this Construction, Operation and Joint Exercise of Powers Agreement to govern their relationship during the construction and operation of the Mid-Western Placer Regional Sewer Project. The County and Lincoln intend that Lincoln will construct the Lincoln-County Project and the County will pay the associated Capital Costs, pursuant to the terms of this Agreement. To the extent that the Capital Charge exceeds the Capital Costs at Project Final Completion, Lincoln will receive an Oversizing Payment in the amount of the difference not to exceed the amount set forth in the Agreement, as a capacity charge contingent on Lincoln's delivery of the Lincoln-County Project within the Capital Charge. Lincoln will operate the Regional Facilities and the County will pay the Operations Charge. After the initial five years, Lincoln will continue to operate the Regional Facilities, subject to oversight by the Oversight Committee and certain Major Decisions reserved to the County's Board of Supervisors and Lincoln City Council.

Recitals

WHEREAS, the Parties have determined that the Lincoln-County Project described in this Agreement is in the public interest, and

WHEREAS the Parties previously entered the "Design and Environmental Review Agreement" dated as of August 14, 2012, as amended to date ("DERA"), whereby County and Lincoln have been working cooperatively to plan, design, acquire real property interests and necessary permits, and prepare for the construction of a regional wastewater collection, conveyance and treatment facilities to serve the County's Sewer Maintenance District 1 sewer service area, and

WHEREAS, the Parties intend for Lincoln to take primary responsibility for the construction of the Lincoln-County Project as delineated in this Agreement, and

WHEREAS, this Agreement sets out certain of Lincoln's Capital Costs for which the County will be responsible to pay, and also provides for County to potentially pay an Oversizing Payment to Lincoln as a capacity charge contingent on Lincoln's ability to deliver the Lincoln-County Project within the Capital Charge, and

WHEREAS, the Parties intend for Lincoln to have primary responsibility for operating the Regional Facilities during the initial Operations Period as delineated in the agreement, and

WHEREAS, the County will periodically pay an Operations Charge to Lincoln for said operation of the Regional Facilities, and

WHEREAS, the Parties will work together to address repair and rehabilitation projects, future expansion projects, and any regulatory changes, as detailed in this Agreement, and

WHEREAS, the Agreement also addresses the Parties' responsibilities with regard to connection fees, claiming unused capacity, reclaimed water, among other things, and provides a process for the Parties to address long-term governance of the Regional Facilities after the initial Operations Period, and

WHEREAS, California Government Code Section 6500 et seq. provides authority for the County and Lincoln to enter into an agreement providing for the joint exercise of their statutory powers, and

WHEREAS, the Parties have now completed the design of the Lincoln-County Project, obtained approval of the Lincoln-County Project pursuant to the California Environmental Quality Act (CEQA), obtained sufficient real property interests to allow construction of the Lincoln-County Project to begin, and obtained bids for the construction of the Lincoln-County Project,

NOW, THEREFORE, the Parties desire to enter this Agreement and each of the Parties agrees to the following terms and conditions:

1. Definitions

1.1 Defined Terms. Certain words and phrases used in this Agreement are defined below.

1.1.1 "Accrued Delay Days" are defined in Section 6.3.2.

1.1.2 "Allowable Staff Costs" means Lincoln's actual amounts expended on salary or wages plus benefits for Lincoln employees working on the Lincoln-County Project, plus amounts paid in accordance with their contracts to contract employees or consultants (not including the CM) acting in an administrative capacity in support of the Lincoln-County Project, plus associated administrative costs such as document reproduction or travel reimbursement, provided that (a) the aggregate amount of Allowable Staff Costs reimbursable for the whole Lincoln-County Project may not exceed the amount shown for "Project Management/Administration" in Exhibit 5, and (b) the aggregate amount of Allowable Staff Costs reimbursable in a calendar month may not exceed that percentage of the amount shown for "Project Management/Administration" in Exhibit 5 that is equal to the percentage completion of construction of the overall Lincoln-County Project.

1.1.3 "Approved Design" means the Lincoln-County Project design reflected in Exhibit 3, as modified for any changes approved per this Agreement.

1.1.4 "Authorized Representative" means the following person representing the indicated Party. A Party may change its Authorized Representative upon written notice to the other Party.

Lincoln: Director of Public Services

County: Director – Facility Services Department

1.1.5 The "**average dry weather flow**" ("**ADWF**") means the average daily wastewater flow into the Regional Facilities consisting of average daily sewage flows and groundwater infiltration. ADWF is the average flow that occurs on a daily basis with no evident

reaction to rainfall. For the purpose of this agreement, ADWF will be the average daily wastewater flow measured from July 1st through September 30th of each year.

1.1.6 "Capital Charge" means the metric against which the Capital Costs are measured and is equal to the amount shown as such in Exhibit 5, subject to being adjusted as provided in Section 4.2.5.

1.1.7 "Capital Contingency" means the contingency within the Capital Charge, separate from the Oversizing Contingency, with a starting balance in the amount shown for the Capital Contingency in Exhibit 5.

1.1.8 "Capital Costs" means those costs incurred by or on behalf of Lincoln for the planning, permitting, design, environmental review, acquisition of real property interests, construction and commissioning of the Lincoln-County Project that fall in any one of the following categories: (a) costs for acquisition of real property interests required for the Lincoln-County Project, including, without limitation, surveys, appraisals, legal fees and costs, necessary eminent domain costs, and title insurance; (b) design and engineering costs required for the Lincoln-County Project, including, without limitation, payments to design firms and consultants, investigation, tests, design, survey, plan printing, construction supervision, and inspection; (c) environmental review costs required for the Lincoln-County Project, including, without limitation, permits, fees, environmental analysis, Lincoln's legal fees associated with environmental review, and negotiation of mitigation measures; (d) construction costs required for the Lincoln-County Project, including, without limitation, payments to consultants, CM, contractors and suppliers, legal fees and costs associated with construction claims, insurance, inspections, environmental mitigation measures, permits and approvals; and (e) Allowable Staff Costs. However, despite the above, Capital Costs do not include: (1) any amounts incurred by Lincoln for judgments, or in settlement of claims, arising out of Lincoln's negligence, bad faith, willful misconduct, or failure to comply with legal requirements; (2) any amounts which Lincoln is able to recoup from insurers, contractors or other third parties; (3) any legal, staff, consultant or administrative costs incurred in connection with dispute resolution under Article 7 of this Agreement; (4) any costs incurred in fulfilling its defense and indemnity obligations under this Agreement; (5) any amounts paid by Lincoln for penalties, fees or other charges by governmental authorities arising out of Lincoln's failure to comply with legal requirements; (6) any amounts incurred by Lincoln for Lincoln-County Project delays that are not County Changes or Force Majeure Events; (7) any amounts that are Lincoln's responsibility under Sections 6.3 or 6.5; (8) any amount of staff or administrative costs that exceed the amounts allowed under the definition of Allowable Staff Costs; (9) payments that Lincoln makes to or on behalf of third party developers except to the extent such payment is for acquiring a real property interest required for the Lincoln-County Project; (10) Lincoln's costs for legal counsel advising on this Lincoln-County Project without limiting clauses (a), (c) and (d) above; (11) any amounts incurred after Project Final Completion or incurred for the operation of the Regional Facilities; and (12) costs payable under the DERA that exceed the not-to-exceed amount in Section 9 of the DERA, as amended.

1.1.9 "CM" means the third party construction management firm to be engaged by Lincoln to manage the work of the construction contractors engaged by Lincoln to build the Lincoln-County Project.

1.1.10 "COJA Change Order" means a written authorization signed by Lincoln and the County adjusting the Approved Design, Capital Charge, or Project Completion Dates, as provided in Section 4.2.5 or Section 4.3.17.

1.1.11 "Committed EDUs" means the applicable Party's total sum of (a) EDUs of its customers currently connected to the Regional Facilities plus (b) EDUs of capacity prepaid by or on behalf of that Party's future customers not yet connected to the Regional Facilities.

1.1.12 "Confidential Information" is any information provided to a Party in the course of this Lincoln-County Project or in the operation of the Regional Facilities that directly concerns the internal operations, strategic plans or legal affairs of the Confiding Party as well as any information identified as confidential by the Confiding Party.

1.1.13 "Confiding Party" means the Party that is confiding its Confidential Information to the other Party.

1.1.14 "Connection Fee Report" means the report attached as Exhibit 10, which has been approved by the Parties.

1.1.15 "County Changes" are any of the following: (a) a material change in the scope of the Lincoln-County Project reflected in the Approved Design that is required by the County for reasons other than Differing Site Conditions or a mistake, error or problem resulting from the act or omission of Lincoln or any of its designers or contractors; or (b) critical path delays to the extent caused by the failure of the County to perform as required by this Agreement and only to the extent such delays are not concurrent with other Lincoln-County Project delays.

1.1.16 The word "**delay**" means any and every type of delay, obstruction, hindrance, interference, loss of productivity, or inefficiency of any kind.

1.1.17 "Decommissioning Substantial Completion" means the date on which the construction work on the decommissioning of the SMD 1 WWTP Site and the construction of the emergency containment basin at the SMD 1 WWTP Site has been substantially completed so that they can be used for their intended purposes and only minor work of a "punch list" nature remains incomplete.

1.1.18 "Decommissioning Completion Date" means February 15, 2016, as may be extended pursuant to this Agreement.

1.1.19 "Differing Site Conditions" means conditions encountered at the Lincoln-County Project site that are either (i) material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, (ii) subsurface or latent physical conditions that differ materially from those indicated in the Approved Design or (iii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement.

1.1.20 "EDU" means an equivalent dwelling unit, which is estimated to equal the quantity and quality of wastewater generated by an average single family dwelling, and which is determined based on 215 gallons per day per EDU and biological oxygen demand of 0.50 lb per day per EDU.

1.1.21 "Expansion Project" means a future project needed for expanding the capacity of the Regional Facilities or any of its components.

1.1.22 "Force Majeure Event" means a natural disaster, terrorist action or act of war in the area of the Lincoln-County Project that necessarily delays the critical path of the Lincoln-County Project.

1.1.23 "Indemnitees" means the County, State of California and their respective elected officials, officers, employees and affiliates.

1.1.24 "Independent Auditor" means the independent auditor to be engaged by County per Section 4.1.6.

1.1.25 "Independent Monitor" means the independent third party engineering firm to be engaged by Lincoln per Section 5.3.9 to monitor both Parties' wastewater flow, biological load and Reclaimed Water volume.

1.1.26 "Initial County Capacity" means 1.7 MGD of influent treatment at average dry weather flow, 11 MGD of pump station and influent treatment at peak flow equivalent to 8094 EDUs and 14.7 MGD of pipeline peak flow.

1.1.27 "Material Default" means the breach or failure to perform any material obligation of that Party under this Agreement. For clarity, Lincoln's failure to comply with any requirement of the State Water Board related to the SRF financing will be a Material Default.

1.1.28 "MGD" means millions of gallons per day.

1.1.29 "Obligated EDUs" means the applicable Party's total sum of (a) EDUs of its customers currently connected to the Regional Facilities plus (b) EDUs of capacity prepaid by or on behalf of that Party's future customers not yet connected to the Regional Facilities. EDUs of unused, non-prepaid existing treatment capacity will be added to Lincoln's total sum of Obligated EDUs.

1.1.30 "Operations Charge" is the amount per month for each EDU (or fraction thereof) of the County's customers connected to the Regional Facilities, charged by Lincoln to the County as compensation for Lincoln's services under this Agreement during the Operations Period per Section 5.2.1.

1.1.31 "Operations Period" means, initially, the period between Treatment Substantial Completion and the fifth year anniversary of that date, but will be extended to cover the period until the Parties execute a separate agreement governing future operations and maintenance of the Regional Facilities or the County elects by written notice to end the Operations Period.

1.1.32 "Oversight Committee" is the committee described in Section 5.4.1.

1.1.33 "Oversizing Contingency" means that contingency included within the Capital Charge with an initial value equal to the amount originally estimated for the Oversizing Payment, as shown in Exhibit 5.

1.1.34 "Oversizing Payment" is the dollar value resulting from subtracting (a) the aggregate Capital Costs through Project Final Completion paid or due to Lincoln or to others on Lincoln's behalf from (b) the Capital Charge, provided that the Oversizing Payment may not exceed \$2,200 per EDU of Initial County Capacity (i.e., \$17,806,800 based on an Initial County

Capacity of 8094 EDUs). A negative value means that no Oversizing Payment is due. The Oversizing Payment serves as a capacity charge contingent on Lincoln's ability to deliver the Lincoln-County Project within the Capital Charge.

1.1.35 "Party" means either of Lincoln or County, as applicable, and "Parties" mean both of them.

1.1.36 The **"peak flow"** means the maximum wastewater flow that occurs over a specific length of time (e.g., daily, hourly, instantaneous). For the purposes of this Agreement, peak flow will be the instantaneous wastewater flow.

1.1.37 "Project Completion Dates" means the Treatment Completion Date, Decommissioning Completion Date, and/or the Project Final Completion Date, as applicable.

1.1.38 "Project Final Completion" means the date when all of the following have occurred: the Lincoln-County Project has been completely constructed according to the Approved Design (as modified by COJA Change Order); no punch list work remains to be completed; Lincoln has certified to the County that construction is finally complete and all Capital Costs have been incurred; and the County has issued written notice of non-objection to the certification of Project Final Completion, provided that if the County fails to issue either a notice of non-objection or a notice objecting to the certification within ten days of receipt of Lincoln's certification, that the County will be deemed to have issued a notice of non-objection. Issuing a notice of non-objection does not waive any rights or remedies that the County otherwise has under this Agreement.

1.1.39 "Project Final Completion Date" means March 31, 2016, as may be extended pursuant to this Agreement.

1.1.40 "Project Neutral" is Steven Block (<http://steveblockarbitration.com>) or any successor appointed to act as the Project Neutral pursuant to Section 7.2. The alternate Project Neutral is William (Bill) L. Baker (bill@wlbakerlaw.com) or any successor appointed to act as the alternate Project Neutral pursuant to Section 7.2.

1.1.41 "Project Schedule" means the Lincoln-County Project schedule to be prepared and updated by Lincoln per Section 4.3.16. The current Project Schedule is attached as Exhibit 4.

1.1.42 "Proportionate Flow" means a Party's percentage share of the total volume of wastewater influent entering the Lincoln WWTRF calculated based on the ratio of (a) a Party's volume of wastewater entering the Regional Facilities during a given period to (b) the total volume of wastewater entering the Lincoln WWTRF during that same period. The volume measurement for the County is the volume of wastewater entering at its point of connection based on the flow data reported by the newly installed mag meter unless contradicted by the Independent Monitor. The volume of wastewater entering the Regional Facilities that is attributable to Lincoln will be the total volume of influent measured at the point of entry into the Lincoln WWTRF less the volume of the County's influent entering the Regional Facilities at the County's point of connection.

1.1.43 "Reclaimed Water" means the water that been discharged from the Lincoln WWTRF after being treated in accordance with applicable law.

1.1.44 "Regional Facilities" means, upon Treatment Substantial Completion, the totality of the Lincoln WWTRF, the pumping facilities at the Joeger Road site in North Auburn and the pipelines connecting the two (including a force main conveyance pipeline and gravity pipelines) and all other necessary appurtenances more particularly described in Exhibit A.

1.1.45 "Regional Sewer Conveyance Connection Fee" means that amount per EDU as established in the Connection Fee Report attributable to additional County connections beyond those included in the Initial County Capacity, covering an equitable share of the cost of the Lincoln-County Project constructed under this Agreement and the cost to fund future expansion of the Regional Facilities' conveyance facilities outside Lincoln's boundaries.

1.1.46 "Regional Sewer Oversizing Connection Fee" is equal to a base amount of \$152 for each EDU (or fraction thereof) of additional capacity granted by Lincoln as adjusted per the following: at the time for payment of the Regional Sewer Oversizing Connection Fee, this base amount will be adjusted by the percentage change of the ENR Construction Cost Index (currently available at <http://enr.construction.com/economics>) from a base year of 2004.

1.1.47 "Regional Sewer Treatment Connection Fee" means the amount per EDU as established in the Connection Fee Report attributable to additional connections by the Parties beyond those connected to the Regional Facilities at Treatment Substantial Completion, covering an equitable share of the cost of the Lincoln-County Project constructed under this Agreement and the cost to fund future expansion of the Regional Facilities' treatment facilities (including the Lincoln WWTRF).

1.1.48 "Regulatory Change" means a change in the applicable laws or regulations regarding wastewater collection and treatment for the Regional Facilities.

1.1.49 "Regulatory Infraction" means a finding or determination by the federal Environmental Protection Agency or the Regional Water Quality Control Board that the Regional Facilities are not in compliance with applicable laws or regulations regarding wastewater treatment.

1.1.50 "Routine Repair" means any single repair or rehabilitation measure for the Regional Facilities that costs less than \$5,000 for the cost of parts and labor. Any repair or rehabilitation purchase or invoice costing over \$5,000 that represents a bundling of similar purchases or an accumulation of measures that each would be smaller than \$5,000 if purchased singly is also Routine Repair. Any repair or rehabilitation measure for the Regional Facilities that does not meet the definition of Routine Repair is still an R&R Project.

1.1.51 "R&R Projects" are repair and rehabilitation measures for various components of the Regional Facilities undertaken after commencement of the Operations Period.

1.1.52 "R&R Study" means the study attached as Exhibit 9, which has been approved by the Parties.

1.1.53 "Senior Executives" mean the County's Director of Facility Services and Lincoln's Public Services Director.

1.1.54 "State Water Board" means the California State Water Resources Control Board.

1.1.55 "SRF" means the State Water Resources Control Board Clean Water State Revolving Fund financial assistance program.

1.1.56 "Treatment Substantial Completion" means the date when Lincoln-County Project construction is sufficiently complete that Lincoln has begun treating County's SMD 1 wastewater at the Lincoln WWTRF at the Initial County Capacity.

1.1.57 "Treatment Completion Date" means August 31, 2015, as may be extended pursuant to this Agreement.

2. Project Description.

The "Lincoln-County Project" is a part of an intended regional wastewater project consisting generally of pumping facilities and other improvements at the County's existing Sewer Maintenance District 1 site on Joeger Road in North Auburn ("SMD 1 WWTP Site"), pipelines (including a gravity force main conveyance pipeline and gravity pipeline) and associated facilities connecting the SMD 1 WWTP Site 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. The Lincoln-County Project is more particularly described in Exhibit 1. If the City of Auburn ("Auburn") separately joins the regional project, then the Lincoln-County Project would be part of the Mid-Western Placer Regional Sewer Project ("MWPRS Project"), which in addition to the Lincoln-County Project could include some or all of the following: improvements to Auburn's wastewater treatment facilities, pipelines and associated facilities to convey Auburn's wastewater to the Lincoln WWTRF, and additional improvements to the Lincoln WWTRF.

Funding for the Lincoln-County Project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.)

3. Relationship of the Parties

3.1 Prior Agreement. Lincoln and County have previously entered into the DERA in connection with the Lincoln-County Project.

3.1.1 This Agreement supersedes the DERA to the extent of this Agreement's subject matter, but Lincoln will perform all remaining obligations under the DERA, including without limit acquiring any remaining real property interests, any remaining design for the Lincoln-County Project, compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), acquiring all necessary permits (excluding County Facility Services Department consultants and staff time), completing the bid process in compliance with SRF guidelines, and performing all studies as delineated therein. All amounts paid by the County or due to Lincoln under the DERA are covered by, and credited toward, the Capital Charge.

3.1.2 The Parties will perform their respective obligations described in Sections 4(e), 5(a) and 6 of the DERA. The agreed route for the rights of way that Lincoln has or will acquire is shown in Exhibit 2. Any deviations from the agreed route require the written approval of the Authorized Representative of the County prior to Lincoln acquiring a right of way for the Lincoln-County Project outside the agreed route, which approval will not be unreasonably withheld or delayed. For acquisition of real property interests other than rights of way, Lincoln will obtain written approval of the County prior to Lincoln acquiring such real property interest. All costs of acquiring real property interests will be as delineated in the DERA and are covered by, and credited toward, the Capital Charge.

3.1.3 Any agreed adjustment of the not-to-exceed amount in Section 9 of the DERA by the Parties does not increase the Capital Charge unless the adjustment is due to a County Change and a COJA Change Order is mutually agreed.

3.2 No Agency Relationship. The Parties' relationship under this Agreement is that of independent contractors. Neither Party is an agent, fiduciary, partner, or affiliate of the other, except to the limited extent set forth in Exhibit 6A.

3.3 City of Auburn Participation. Lincoln and Auburn have had discussions regarding the possibility of Auburn participating in the MWPRS Project. If Auburn joins the MWPRS Project, Lincoln and Auburn will enter into a separate agreement to provide for such participation, and the Parties will endeavor to negotiate a separate agreement with Auburn regarding certain common issues connected with the MWPRS Project, which may require revisions to this Agreement.

3.4 Joint Exercise of Powers. The Parties are entering this Agreement pursuant to authority under California Government Code Section 6500 et seq. For clarity, the Parties are not creating a separate joint powers agency, but are jointly exercising their statutory powers through this Agreement.

4. Construction of Lincoln-County Project

4.1 Administration.

4.1.1 Authorized Representatives. Each Party's Authorized Representative will have the authority to represent its Party and make decisions for that Party under this Agreement. Each Party's Authorized Representative is responsible for determining when a particular decision requires the prior authorization of the Party's Board of Supervisors or City Council.

4.1.2 Project Coordination Team. During the construction of the Lincoln-County Project, the Parties agree to work together through a project coordination team ("PCT"). The PCT will include each Party's Authorized Representative and such other staff or consultants as a Party desires. The PCT will meet periodically as agreed by its members, but at least monthly, to review progress and cooperate in fulfilling each Party's responsibilities under this Agreement.

(a) Lincoln agrees to provide information on the progress of the Lincoln-County Project and advise the PCT on the analyses and decisions made for the Lincoln-County Project since the last meeting. Lincoln agrees to receive input from the PCT and will endeavor to timely address concerns or other issues raised by the PCT.

(b) In the event of an unresolved dispute among the PCT regarding a Party's rights or obligations under this Agreement, the dispute resolution procedures of Article 7 will apply.

4.1.3 Lincoln Insurance Obligations. During the construction of the Lincoln-County Project, Lincoln must meet the insurance requirements set forth in Exhibit 7A. Failure to maintain the required insurance will be a Material Default by Lincoln, and if not timely cured will give County the right, at its election and in addition to any other remedies provided herein, to procure any required insurance on behalf of Lincoln at Lincoln's expense.

4.1.4 County Insurance Requirements. During the period in which County is carrying on operations at the SMD 1 WWTP Site, County must meet the insurance requirements set forth in Exhibit 7D. Failure to maintain the required insurance will be a Material Default by County, and if not timely cured will give Lincoln the right, at its election and in addition to any other remedies provided herein, to procure any required insurance on behalf of County at County's expense.

4.1.5 Construction Period Reporting.

(a) In addition to any information to be reported under other provisions of this Agreement, Lincoln will provide a monthly report to the County (and County will promptly provide such report to the State Water Board) during the construction of the Lincoln-County Project, in a format approved by the PCT and State Water Board, that addresses at least the following items:

(i) A summary of progress to date, including a description of progress since the last report, percentage of construction complete, percentage of contractor prices invoiced and percentage of schedule elapsed;

(ii) the work sites where work is scheduled to be performed in the coming month together with the anticipated work activities at those sites;

(iii) an updated cash flow forecast of Capital Costs, including the Capital Costs incurred in the previous month and to date with a break-out by cost category per Exhibit 6A, the current balance of the Capital Contingency and Oversizing Contingency, and the estimated amount of Capital Costs to complete construction of the Lincoln-County Project;

(iv) Capital Costs associated with Differing Site Conditions per Section 4.3.14;

(v) the current status of any unresolved known or potential claims that would qualify as a Capital Cost;

(vi) a description of compliance with environmental requirements;

(vii) contractor change orders requested or granted in the previous month that would qualify as a Capital Cost, including amount, description of work and change in contract amount and schedule;

(viii) the current status of any COJA Change Orders or potential COJA Change Orders under this Agreement;

(ix) any public communications or outreach regarding the Lincoln-County Project during the previous month; and

(x) any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions.

(b) **As Needed Reports.** Lincoln agrees to expeditiously provide, during the construction or operation of the Lincoln-County Project, such reports, data, and information as may be reasonably required by the State Water Board, including but not limited to material necessary or appropriate for evaluation of the Clean Water State Revolving Fund Program or to fulfill any reporting requirements of the federal government.

(c) **Federal Disadvantaged Business Enterprise (DBE) Reporting.** Lincoln agrees to report DBE utilization to the County (so that County may report to the State Water Board) on the DBE Utilization Report, State Water Board Form DBE UR334. Lincoln must submit such reports to the County (so that County may report to the State Water Board) semiannually within 5 calendar days following April 1 and October 1 of each calendar year through Project Final Completion. Lincoln agrees to comply with 40 CFR § 33.301.

4.1.6 Independent Auditing of Capital Costs. County will engage an Independent Auditor approved by Lincoln to audit the Capital Costs for the Lincoln-County Project. The costs and fees of the Independent Auditor will be County's responsibility and will not be Capital Costs.

(a) The essential role of the Independent Auditor will be to objectively and independently ascertain: (a) whether the Capital Costs in Lincoln's payment requests are accurately stated and not duplicated or previously paid; (b) whether amounts paid to Lincoln's contractors, consultants and other payees reasonably appear to be appropriate under the terms of their respective contracts; (c) that amounts included in Lincoln's payment requests reasonably appear to qualify as Capital Costs under this Agreement; and (d) that County's disbursements of payments under Exhibit 6 are in accord with amounts approved for payment under this Agreement.

(b) The Independent Auditor will perform the following audits:

(i) quarterly "spot" audits in which the Independent Auditor analyzes a representative sample of the Capital Costs included in Lincoln's payment requests and those paid by County during the previous quarter. The first two quarterly audits will include a more intensive sampling in order to establish clearer expectations among the Parties about the characterization and processing of costs.

(ii) annual complete audits of the Capital Costs included in Lincoln's payment requests and those paid by County during the previous year.

(iii) a complete audit after Project Final Completion of all Capital Costs included in Lincoln's payment requests and those paid by County from the outset of the Lincoln-County Project (including those payments covered by the Advance Funding Agreement dated May 8, 2012 and the DERA). The Independent Auditor, in its independent

professional judgment, may rely on the results of the previously completed annual audits in conducting the final audit.

(c) After each audit, the Independent Auditor will issue a written report to the Parties. The Parties may use the findings of the audit report in reconciling amounts due for unpaid Capital Costs or to be credited for costs paid which were not Capital Costs, or in assessing any withholding allowed under this Agreement, or in dispute resolution.

(d) Each Party will allow the Independent Auditor to access and copy their books, contracts, records and files related to Capital Costs during reasonable business hours.

4.1.7 SRF Record-Keeping and Audit Requirements.

(a) Without limiting Lincoln's obligation to maintain Lincoln-County Project accounts in accordance with generally accepted accounting principles, Lincoln agrees to:

(i) Establish an official file for the Lincoln-County Project which will adequately document all significant actions relative to the Lincoln-County Project;

(ii) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Lincoln-County Project;

(iii) Establish separate accounts which will adequately depict all income received which is attributable to the Lincoln-County Project;

(iv) Establish an accounting system which will accurately depict final total costs of the Lincoln-County Project, including both direct and indirect costs;

(v) Establish such accounts and maintain such records as may be necessary for the State to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and

(vi) If Lincoln uses its own employees or equipment for any construction of the Lincoln-County Project, other than for planning, design, and construction engineering and administration, accounts will be established which reasonably document all employee hours charged to the Lincoln-County Project and the associated tasks performed by each employee.

(b) Lincoln must maintain and retain separate books, records and other material relative to the Lincoln-County Project for itself and for each contractor or subcontractor who performed work on the Lincoln-County Project until three years after the date of completion of the applicable construction project, or until the resolution of any dispute, litigation or investigation commenced prior to the end of such three year period, whichever period is longer (the "Retention Period"). Lincoln will require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and will allow interviews during normal business hours of any employees who

might reasonably have information related to such records. At the end of the Retention Period for a construction contract, Lincoln will provide all such books, records, and other relevant documentation regarding the project held by Lincoln and that contractor to County. Lincoln recognizes that County is required by the State Water Board to maintain such records for 36 years after Lincoln-County Project completion. Lincoln agrees to include a similar right regarding audit, interviews, and records retention in any construction contract for the Lincoln-County Project. The provisions of this section will survive the expiration or termination of this Agreement.

(c) **Audit.** The State Water Board, at its option, may call for an audit of financial information relative to the Lincoln-County Project. Where such an audit is called for, the audit will be performed by a certified public accountant independent of the County and County will be responsible for the costs for such audit, but such costs will not be Capital Costs chargeable against the Capital Charge. The audit will be in the form required by the State Water Board. If any Capital Costs paid by the County are disallowed by the State Water Board, then:

(i) to the extent the disallowance was the result of Lincoln's failure to comply with the COJA, then Lincoln will return such amounts to the County or the County may offset such amounts against other amounts due to Lincoln; or

(ii) to the extent the disallowance was the result of the nature of the cost not being reimbursable under the SRF financing (other than by reason of Lincoln's failure to comply with the COJA), then, provided the cost met the definition of a Capital Cost and payment was required under the COJA, County will be responsible for repaying such disallowed cost to the State Water Board.

(d) **Financial Management System and Standards.** Lincoln agrees to comply with federal standards for financial management systems. Lincoln agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracking of Lincoln-County Project funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of the SRF financing. To the extent applicable, Lincoln agrees to be bound by, and to comply with, the provisions and requirements of the federal Single Audit Act of 1984, Office of Management and Budget (OMB) Circular No. A-133, and updates or revisions, thereto. (Pub. L. 98-502.)

(e) **Accounting and Auditing Standards.** Lincoln will maintain separate Lincoln-County Project accounts in accordance with generally accepted accounting principles. Lincoln will comply with "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office. (40 CFR § 35.3135, subd. (I).)

4.1.8 Required Disclosure. Lincoln must include the following disclosure statement in any document, written report, or brochure prepared in whole or in part for the Lincoln-County Project:

"Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and

policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.)"

4.2 Finance.

4.2.1 Payment of Capital Costs. The County will pay Capital Costs per the terms of this Agreement. In its payment requests, Lincoln will comply with the requirements of Exhibit 6 and provide to the County documentation of Capital Costs incurred together with all back-up information including but not limited to: invoices/pay applications from designers, CM, contractors, consultants and suppliers; real property instruments; time sheets; salaries; invoices and statements; itemized administrative costs; other documentation reasonably required by the County; and any and all documentation as may be required by the State Water Board.

(a) Per the terms of the Paying Agent Provisions (Exhibit 6A), County will disburse amounts to pay Capital Costs on behalf of Lincoln to Lincoln's third party contractors, consultants and other payees. For those Capital Costs that are Allowable Staff Costs, County will reimburse Lincoln per Exhibit 6. By disbursing Capital Costs on behalf of Lincoln, County is not assuming any liability or obligation to Lincoln's contractors, consultants or other payees.

(b) Lincoln will report and manage its Capital Costs using the cost categories indicated in Exhibit 6A. No duplicative charges for Capital Costs that fit into more than one category (whether in Exhibit 6A or in the definition of Capital Costs) will be paid.

(c) In processing a payment request under Exhibit 6A, the County may only make adjustments to the payment amount to the extent required to address: (1) mathematical errors in the payment request; (2) adjustments identified by the Independent Auditor for a previous payment; or (3) adjustments for payment made on a previous payment request as determined under Section 4.2.1(c)(i) below.

(i) Without delaying the processing of a payment under Section 4.2.1(c), the County will review in detail the submitted payment request. To the extent that the County reasonably determines to withhold payment under any of the categories established below, the County will advise Lincoln in writing of any amounts that County intends to withhold from the next month's payment, giving the reasons for the withholding and the conditions for future release of the withheld funds. If Lincoln disputes the appropriateness of the proposed withholding, then the dispute will be resolved under the expedited process of Section 7.2. The County may adjust a succeeding month's requested payment amount to reflect the County's proposed withholding (if undisputed) or the amount of withholding determined by the Project Neutral (if applicable). The categories for which County may withhold payment of Capital Costs under this Section 4.2.1(c)(i) are as follows:

(1) an amount to cover claims made against the County that arise out of the Lincoln-County Project and for which Lincoln is responsible under this Agreement;

(2) an amount to cover damage to the County's property caused by Lincoln or any of its contractors when performing the Lincoln-County Project;

(3) disputed amounts in Lincoln's payment requests, but only to the extent of the disputed amount;

(4) an amount to cover penalties, fines or other charges of governmental authorities assessed against the County on account of acts or omissions of Lincoln or any of its contractors when performing the Lincoln-County Project, provided that this does not apply to fines imposed on the County by the Central Valley Regional Water Quality Board prior to the Treatment Completion Date for the County's discharges at the SMD 1 WWTP Site; or

(5) an amount to cover costs or damages incurred by the County in connection with a Material Default by Lincoln that are not covered under the categories above.

(ii) If Lincoln fails to address the reason for withholding as required under this Agreement or applicable law, the County may keep the withheld funds to the extent such funds will offset the County's costs, losses and damages connected with that item. When and to the extent the applicable reason(s) for withholding payment are removed, payments will be made for such amounts previously withheld in the next monthly payment, with any appropriate offsets and with no interest owed. Payments wrongfully withheld will bear interest from the date the payment was originally due to the date paid at the rate set forth in Section 8.14.

(d) The County may also withhold payment of all Capital Costs during any period in which Lincoln has not cured a Material Default after notice pursuant to Section 6.5.

(e) Prior to any settlement of Lincoln-County Project claims which Lincoln is allowed to charge as Capital Costs under this Agreement, Lincoln will provide written notice of the proposed terms of the settlement to the Authorized Representative of the County for written approval, not to be unreasonably withheld or delayed. If the County has acted reasonably in not approving a proposed settlement, then Lincoln will either negotiate a settlement that the County reasonably approves in writing or negotiate an amount of the proposed settlement which the County reasonably agrees to pay as Capital Costs with Lincoln bearing the cost of the difference. Any claim that the County has acted unreasonably will be resolved per Article 7.

(f) All Capital Costs paid by the County to Lincoln for the Lincoln-County Project prior to the effective date of this Agreement will be credited against the Capital Charge.

(g) If at any time it appears reasonably probable to Lincoln that the aggregate Capital Costs paid by the County will exceed the Capital Charge, Lincoln will immediately notify the County in writing and call for a special meeting of the PCT to discuss the situation. At the election of the County, Lincoln must suspend work on the Lincoln-County Project until the County provides written authorization to proceed. Should Lincoln fail to provide the written notice required under this section at least three months prior to incurring Capital Costs that would overrun the Capital Charge, Lincoln will be solely responsible for paying all

Capital Costs exceeding the Capital Charge notwithstanding anything to the contrary in this Agreement.

4.2.2 Capital Contingency. The Capital Charge includes a Capital Contingency separate from the Oversizing Payment. The Capital Contingency is available for Lincoln to cover any Capital Costs prior to Project Final Completion that were unanticipated by Lincoln at the outset of the Lincoln-County Project, such as greater than anticipated construction bids, Differing Site Conditions, and Lincoln-County Project delays not constituting County Changes. Use of this Capital Contingency requires ten days advance notice and the written approval of the Authorized Representative of the County, not to be unreasonably withheld. The Capital Contingency is not available to pay for County Changes.

4.2.3 Oversizing Payment & Oversizing Contingency. Lincoln has included within the Capital Charge an Oversizing Contingency equal to the originally estimated Oversizing Payment. The Oversizing Contingency serves as additional contingency for the Lincoln-County Project should the separate Capital Contingency be fully depleted, at which time the Oversizing Contingency would be used on the same basis as the Capital Contingency as described in Section 4.2.2 above. For clarity, the Oversizing Contingency is only used if and when the Capital Contingency is depleted. County will deposit the funds for the Oversizing Contingency with the Paying Agent per the Paying Agent Provisions (Exhibit 6A). If an Oversizing Payment has been generated because the aggregate Capital Costs through Project Final Completion paid or due to Lincoln are less than the Capital Charge, then Lincoln will earn the Oversizing Payment once the Lincoln-County Project has achieved Project Final Completion and the contract-required volume of wastewater of the County is being treated by the Regional Facilities. Any earned Oversizing Payment will be paid to Lincoln promptly after Project Final Completion provided that there is no uncured Material Default by Lincoln at that time.

4.2.4 Obtain SRF Financing. The County will endeavor to obtain financing for its payment obligations from the SRF, and Lincoln will provide all reasonably necessary assistance, including those actions indicated in the DERA and elsewhere in this Agreement. The Parties agree and acknowledge that obtaining financing through the SRF will require meeting specific SRF-mandated deadlines, including State Water Board receipt of a complete, financeable application by September 30, 2013. The Parties further agree and acknowledge that a complete SRF package includes, but is not limited to, all documentation required by the Policy for Implementing The Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities as Amended March 2009, including environmental documentation with permits, credit and legal documentation, Project Performance Certifications, tax submittals, required Resolutions, a Project Facilities Plan, and specific mandated forms. The County and Lincoln agree to work cooperatively to ensure that deadlines and all required documentation, submittal requirements and related guidelines are met.

(a) Failure to obtain the SRF financing will not be a Material Default. If the County is unsuccessful in obtaining SRF financing in an amount sufficient to cover the Capital Charge, the County may terminate this Agreement upon written notice to Lincoln. After such a termination, provided that there is no uncured Material Default by Lincoln at the time of termination, the County must promptly reimburse Lincoln for all undisputed and unpaid Capital Costs owed by County under this Agreement that are incurred by Lincoln through the effective date of termination and a reasonable period of time thereafter for Lincoln to terminate its design and construction contracts, cancel orders of materials and equipment and restore any excavation or disturbed conditions. Disputed Capital Costs will be resolved per Article 7.

Payment of Capital Costs through the effective date of termination will be Lincoln's sole remedy for a termination under this section.

4.2.5 Allowed Adjustments to Capital Charge. The Capital Charge may only be adjusted based on one or more of the following:

(a) Escalation/De-escalation. The Capital Charge contains an allowance as shown in Exhibit 5 to cover inflation in the cost of construction work on an assumption of 2% annual inflation from February 1, 2012 to July 1, 2014 (the mid-point of construction). Upon the Adjustment Date (see below), the \$51,000,000 estimate for construction work in Lincoln's 2012 offer will be adjusted based on the percentage change of the ENR Construction Cost Index (currently available at <http://enr.construction.com/economics>) from February 2012 to the Adjustment Date. If the incremental amount of adjustment of that construction estimate exceeds the inflation allowance in the Capital Charge, then the Capital Charge will be increased by the amount by which such incremental adjustment exceeds the inflation allowance in the Capital Charge, and the inflation allowance will be reduced to zero. If the incremental amount of adjustment in that construction estimate does not exceed the inflation allowance in the Capital Charge, then any remaining amount in the inflation allowance after subtracting the incremental adjustment will result in a reduction in the Capital Charge. Changes to the Capital Charge under this Section 4.2.5(a) will be documented in a COJA Change Order.

(i) The "Adjustment Date" is July 1, 2014.

(b) County Changes to the Approved Design. The County may require a change to the Approved Design by written notice to the Authorized Representative of Lincoln. If the change qualifies as a County Change, then Lincoln will be entitled to an equitable adjustment to the Capital Charge and/or the applicable Project Completion Dates. Lincoln and the County will negotiate in good faith the amount of adjustment to the Capital Charge, Project Completion Date(s), and, if applicable, the Operations Charge. If Lincoln and the County agree to make the requested change, the change in the Approved Design and other terms will be documented in a COJA Change Order signed by Lincoln and the County. Lincoln will have no right to disapprove County's requested change in the Approved Design unless the change would not comply with applicable laws or regulations, would materially harm the interests of Lincoln's existing customers, or be technically impracticable to implement.

(c) Delays for which the County is Responsible. If Lincoln desires to claim that a critical path delay in the Lincoln-County Project is a County Change, it will notify the Authorized Representative of the County in writing within seven days of the occurrence of the event or circumstance causing the delay. The notice will indicate the nature and estimated length of the delay and provide specific details of the facts and contractual provisions justifying characterization of the delay as a County Change. Failure to timely provide such notice will waive Lincoln's right to claim an adjustment of the Capital Charge or Project Completion Dates for that delay. Lincoln will promptly provide documentation requested by the County to show its calculation of the requested adjustment to the Capital Charge and Project Completion Dates. If the delay qualifies as a County Change and the required notice was timely given, Lincoln will be entitled to an equitable adjustment of the applicable Project Completion Dates and, to the extent such delay results in actual additional Capital Costs, of the Capital Charge. Lincoln and the County will negotiate in good faith the amount of adjustment to the Project Completion Dates and, if applicable, the Capital Charge, which will be documented in a COJA Change Order signed by Lincoln and the County. If the Parties are not able to agree, the dispute will be resolved under Article 7.

4.3.14. (d) For Differing Site Conditions to the extent allowed under Section

(e) If there is a Material Default by Lincoln and Lincoln has failed to cure the default(s) under Section 6.5.1, then the Capital Charge will be reduced by the aggregate amount of costs that the County offsets pursuant to this Agreement against amounts owed to Lincoln.

4.2.6 Payment for County Changes. The County will bear all additional Capital Costs resulting from a County Change, and Lincoln will segregate those additional Capital Costs in its payment requests.

4.2.7 Prevailing Wages. Lincoln agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages and by Exhibit 15. Lincoln will monitor all contracts subject to reimbursement under this Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 and the requirements of Exhibit 15 are being met.

4.2.8 Refunds, Rebates and Credits. Lincoln agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by Lincoln in connection with the construction of the Lincoln-County Project will be paid by Lincoln to the County, to the extent that they are properly allocable to Capital Costs paid by the County to or on behalf of Lincoln, provided, however, that any such refunds, rebates, credits or other amounts shall not result in a reduction of the Capital Charge unless they also represent a reduction in the scope of work or services provided to Lincoln.

4.2.9 No Private Use of Project. Lincoln covenants that none of the funds provided by the County to Lincoln, nor the Lincoln-County Project are, have been or will be used in the aggregate for any activities that constitute a Private Use (as defined below). Lincoln further covenants that none of the funds provided by the County to Lincoln, nor the Lincoln-County Project are, have been or will be used for a Private Use that is unrelated to or disproportionate to the governmental use of those funds or the Lincoln-County Project. "Private Use" means any activity that constitutes a trade or business that is carried on by persons or entities, other than a state or local governmental unit. The leasing of the Lincoln-County Project or the access by or the use of the Lincoln-County Project by a person or entity other than a state or local governmental unit on a basis other than as a member of the general public shall constitute a Private Use. Use by or on behalf of the State of California or any of its agencies, instrumentalities or subdivisions or by any local governmental unit and use as a member of the general public will be disregarded in determining whether a Private Use exists. Use under an arrangement that conveys priority rights or other preferential benefits is generally not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits. For this purpose, rates may be treated as generally applicable and uniformly applied even if (i) different rates apply to different classes of users, such as volume purchasers, if the differences in rates are customary and reasonable; or (ii) a specially negotiated rate arrangement is entered into, but only if the user is prohibited by federal law from paying the generally applicable rates, and the rates established are as comparable as reasonably possible to the generally applicable rates. An arrangement that does not otherwise convey priority rights or other preferential benefits is not treated, nevertheless, as general public use if the term of the use under the arrangement, including all renewal options, is greater than 200 days. For this purpose, a right of first refusal

to renew use under the arrangement is not treated as a renewal option if (i) the compensation for the use under the arrangement is redetermined at generally applicable, fair market value rates that are in effect at the time of renewal; and (ii) the use of the financed property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business.

(a) With respect to management and service contracts, the determination of whether a particular use constitutes Private Use shall be determined on the basis of applying Section 1.141-3(b)(4) of the Treasury Regulations, Revenue Procedure 97-13, and other applicable rules and regulations. As of the date hereof, no part of the funds to be provided by the County nor the Lincoln-County Project are being used to provide property subject to contracts or other arrangements with persons or entities engaged in a trade or business (other than state or local governmental units) that involve the management of property or the provision of services that do not comply with the standards of the Treasury Regulations and Revenue Procedure 97 13.

(b) Except to the extent that Lincoln has received an opinion of counsel expert in the issuance of state and local government bonds the interest on which is excluded from gross income under Section 103 of the Code ("Nationally-Recognized Bond Counsel") and satisfactory to the State Water Board and the California Infrastructure and Economic Development Bank to the contrary, Lincoln will not enter into any management or service contracts with any person or entity that is not a state or local governmental unit for services to be provided with respect to the Regional Facilities except with respect to contracts where the following requirements are complied with: (i) the compensation is reasonable for the services rendered; (ii) the compensation is not based, in whole or in part, on a share of net profits from the operation of the Regional Facilities; (iii) not more than twenty percent (20%) of the voting power of Lincoln in the aggregate may be vested in the service provider and its directors, officers, shareholders, and employees and vice versa; (iv) any overlapping board members between Lincoln and the service provider must not include the chief executive officer or executive director of either, or their respective governing bodies; and (v):

(i) At least ninety-five percent (95%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee which is a stated dollar amount for services rendered for a specified period of time. The stated dollar amount may automatically increase according to a specified objective external standard that is not linked to the output or efficiency of a facility, e.g., the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. A fee shall not fail to qualify as a periodic fixed fee as a result of a one (1) time incentive award during the term of the contract under which compensation automatically increases when a gross revenue or expense target (but not both) is reached if that award is a single stated dollar amount. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and fifteen (15) years (twenty (20) years for "public utility property" within the meaning of Section 168(i)(10) of the Code);

(ii) At least eighty percent (80%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee. The term of the contract, including all renewal options, must not exceed the lesser of eighty percent (80%) of the reasonably expected useful life of the financed property and ten (10) years. A one (1) time incentive award during the term of the contract similar to the award described in subsection (a) above is permitted under this option as well;

(iii) At least fifty percent (50%) of the compensation for services for each annual period during the term of the contract is based on a periodic fixed fee or all of the compensation for services is based on a capitation fee or combination of a periodic fixed fee and a capitation fee. A capitation fee is a fixed periodic amount for each person for whom the service provider or Lincoln assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons vary substantially; e.g., a fixed dollar amount payable per month to a service provider for each member of a plan for whom the provider agrees to provide all needed services for a specified period. A capitation fee may include a variable component of up to twenty percent (20%) of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. The term of the contract, including all renewal options, must not exceed five (5) years. The contract must be terminable by Lincoln on reasonable notice without penalty or cause, at the end of the third year of the contract;

(iv) All of the compensation for services is based on a per-unit fee or a combination of a per-unit fee and a periodic fee. A per-unit fee is defined to mean a fee based on a unit of service provided as specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the program or Lincoln; e.g., a stated dollar amount for each specified procedure performed, car parked or passenger mile is a per-unit fee. The term of the contract, including all renewal options, must not exceed three (3) years. The contract must be terminable by Lincoln on reasonable notice, without penalty or cause, at the end of the second year of the contract term; or

(v) All of the compensation for services is based on a percentage of fees charged or a combination of a per-unit fee and a percentage of revenue or expense fee. During the start up period, however, compensation may be based on a percentage of gross revenues, adjusted gross revenues, or expenses of a facility. The term of the contract, including renewal options, must not exceed two (2) years. The contract must be terminable by Lincoln on reasonable notice without penalty or cause, at the end of the first year. This type of contract is permissible only with respect to contracts under which the service provider primarily provides services to third parties, and management contracts involving a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses (e.g., a contract for general management services for the first year of the operations).

(c) If the compensation terms of a management or service contract are materially revised, the requirements for compensation terms must be retested as of the date of the material revision and the management or service contract is treated as one that was newly entered into as of the date of the material revision.

(d) A renewal option, for purposes of the foregoing, is defined to mean a provision under which the service provider has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for one (1) year periods absent cancellation by either party is not a renewal option, even if it is expected to be renewed.

(e) A cancellation penalty is defined to include a limitation on Lincoln's ability to compete with the service provider, a requirement that Lincoln purchase equipment, goods, or services from the service provider, and a requirement that Lincoln pay liquidated damages for cancellation of the contract; in comparison, a requirement effective on cancellation that Lincoln reimburse the service provider for ordinary and necessary expenses or a restriction

against Lincoln hiring key personnel of the service provider is generally not a contract termination penalty. Another contract between the service provider and Lincoln, such as an installment sale agreement or guarantee by the service provider, is treated as creating a contract termination penalty if that contract contains terms that are not customary or arm's length or that could operate to prevent Lincoln from terminating the contract (e.g., provisions under which the contract terminates if the management contract is terminated or that places substantial restrictions on the selection of a substitute service provider).

(f) The service provider must not have any role or relationship with Lincoln, that, in effect, substantially limits Lincoln's ability to exercise its rights, including cancellation rights, under the contract, based on all the facts and circumstances.

4.3 Construction.

4.3.1 General. Subject to the provisions of this Agreement, Lincoln has the sole responsibility to construct the Lincoln-County Project, including without limitation all permitting, construction management, bidding, contracting, environmental mitigation, and construction claims resolution. Without limiting Section 4.2.1, all costs associated with the construction, including without limitation payments due to design firms, consultants, CM, contractors and suppliers, legal costs, insurance costs, costs of permits and approvals, and costs of Lincoln's own staff are Lincoln's sole responsibility and covered by the Capital Charge. Lincoln will promptly notify the County in writing of the date of commencement of the construction work.

4.3.2 Approved Design and Permits. Lincoln will do all things necessary to construct the Lincoln-County Project according to the Approved Design. Lincoln will obtain all permits, licenses and other approvals per the DERA and as necessary to construct the Lincoln-County Project, and, subject to the remainder of this Section 4.3.2, pay all associated charges and fees. The County agrees to waive for Lincoln any processing fees that the County normally charges for permits issued by the County. Lincoln agrees that the Capital Costs will include up to a total cost of \$100,000 for County staff time associated with the inspection of road restoration in County maintained roads incident to the construction of the Lincoln-County Project charged by the County's Department of Public Works (DPW) and Community Development Resource Agency (CDRA), provided that if the County demonstrates by reasonable documentation that additional inspection by DPW or CDRA is required due to the failure of Lincoln's contractors or CM to perform work in accordance with County road restoration standards, and provided that written notice is given to Lincoln by the County within 14 days of the work claimed to not meet the County road restoration standards, then the additional required inspection costs by DPW or CDRA will be chargeable to Lincoln and reimbursable as Capital Costs but without adjusting the Capital Charge, all subject to Lincoln's right to dispute such charges and/or claims of non-conforming work. Any dispute regarding additional DPW or CDRA inspection will be resolved per Article 7. Signed copies of all permits and licenses must be submitted to the County and State Water Board prior to commencement of construction work. Subject to Section 4.2.5(b), the Authorized Representatives of Lincoln and the County must each approve any changes in the Approved Design prior to the construction of any such changes. In addition, any substantial change in the scope of the Lincoln-County Project must be approved in advance by the State Water Board prior to executing any COJA Change Order or change order with a contractor for such change.

4.3.3 Approval of Contracts. For any design, consulting, CM or construction contract for the Lincoln-County Project having a value in excess of \$100,000, the Authorized

Representative of the County must approve the contract value or price prior to Lincoln executing such contract and with at least ten days advance notice from Lincoln of the proposed contract value or price. This approval does not apply to contracts for work or services done pursuant to the DERA. Without limiting the prior sentences, Lincoln will award the prime construction contracts no later than the dates shown for such awards in Exhibit 4. Lincoln will promptly notify the County in writing of Lincoln's award of any design, consulting, CM or construction contract for the Lincoln-County Project, and the County will then promptly notify the State Water Board of such contract award. Without limiting Section 4.3.2, the Authorized Representative of the County must approve any change order or contract amendment increasing the contract value or price of a design, consulting, CM or construction contract for the Lincoln-County Project by more than \$100,000 after receiving at least ten days advance notice from Lincoln of the proposed change order or contract amendment, provided that any proposed change order required because of an emergency as defined in Public Contract Code Section 1102 need only be submitted for County review one business day in advance of Lincoln's approval of the change order unless the change order involves a substantial change in scope of the Lincoln-County Project, in which case it must receive prior approval from the State Water Board.

4.3.4 Required Design Contract Provisions. Lincoln represents and warrants that it will include the following provisions in its contracts with design firms and consultants for the Lincoln-County Project, with any deviations (other than changes to conform to contract references or contract-defined words or phrases) in a particular contract specifically approved in writing by the County:

- (a) the County of Placer is an intended third party beneficiary of the contract;
- (b) the design firm or consultant acknowledges that the County has the right to approve the design of the Lincoln-County Project and any changes to the approved design;
- (c) the design firm or consultant will defend and indemnify the County of Placer and State of California to the same extent that it defends and indemnifies Lincoln;
- (d) the design firm or consultant is obligated to carry insurance meeting at least the requirements set forth in Exhibit 7C;
- (e) the design firm or consultant agrees to look solely to Lincoln and not to the County of Placer for payment under that contract notwithstanding that the County of Placer may be disbursing payments to the design firm or consultant on behalf of Lincoln in certain instances;
- (f) the design firm or consultant agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of the contract are subject to the rights of Lincoln, Placer County and the State of California as set forth in this section. Lincoln, the County and the State each have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the design firm or consultant may copyright the same, except that, as to any work which is copyrighted by the design firm or consultant, Lincoln, the County and the State each reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish,

and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the design firm or consultant upon request;

(g) the design firm or consultant waives and releases all claims against the County of Placer arising out of the contract or the Lincoln-County Project that are not caused by the active negligence of the County;

(h) the contract is assigned by Lincoln to the County of Placer effective only upon written notice to both Lincoln and the design firm or consultant from County accepting such assignment;

(i) Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board, nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.); and

(j) Lincoln may terminate the contract at its convenience upon at least seven days prior written notice.

4.3.5 Required Construction Contract Provisions. Lincoln represents and warrants that (1) it has included the following provisions in the proposed contracts with the CM and construction contractors in the bid documents for the Lincoln-County Project and (2) it will include the follow provisions in the final awarded CM and construction contracts, with any deviations (other than changes to conform to contract references or contract-defined words or phrases) in a particular contract specifically approved in advance in writing by the County:

(a) To the fullest extent permitted by law, the contractor will defend, indemnify and hold Lincoln, Lincoln's consultants and design firms, the County of Placer, the State of California, and their respective officers, directors, members, employees and affiliates ("Owner Indemnitees") harmless from any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) arising out of, or resulting from, the acts or omissions, in whole or in part (including breach of contract), of the contractor, its subcontractors and their respective officers, directors, partners, agents, employees or anyone for whom they may be liable. Notwithstanding the above, the contractor will not be required to defend, indemnify and hold harmless an Owner Indemnitee for the indemnitee's own active negligence, sole negligence or willful misconduct, provided that the contractor will continue to indemnify and defend the indemnitee to the extent and in proportion to the degree that the indemnitee is not actively negligent. The indemnification obligations set forth in this paragraph will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the contractor under insurance policies, workers compensation laws, disability benefit laws or other employee benefit laws.

(b) The contractor will defend, indemnify, and hold Lincoln, the County of Placer and the State of California harmless from any and all claims, stop payment notices, or connected legal proceedings filed by the contractor or its subcontractors, suppliers, or other persons or entities claiming by or through the contractor by reason of having provided labor, materials, and equipment relating to the Lincoln-County Project;

(c) The contractor will carry insurance meeting at least the requirements set forth in Exhibit 7B;

(d) The contractor^{*} will furnish both a faithful performance bond and a payment bond (the "Bonds") with penal sums equal to the contract price and in the forms set forth in Exhibit 8 prior to the commencement of its work. The City of Lincoln and the County of Placer will be dual obligees under the performance bond. The performance bond must cover the one-year period for correction of work under the contractor's warranty of its work. Bonds must be obtained from a California admitted surety that is licensed by the State of California to act as surety upon bonds and undertakings and which maintains in this State at least one office for the conduct of its business. The surety will furnish reports as to its financial condition from time to time upon request by Lincoln or the County of Placer. In case of any conflict between the terms of the contractor's contract and the terms of the Bonds, the terms of the contract will control and the Bonds will be deemed to be amended thereby. The contractor agrees to obtain the consent of the surety, if required, to any change, extension of time, alteration, or addition to any of the terms of the contractor's contract documents.

(e) The contractor agrees to look solely to Lincoln and not to the County of Placer for payment under that contract notwithstanding that the County may be disbursing payments to the contractor on behalf of Lincoln in certain instances;

(f) Statutory preliminary notices and any stop payment notices must be sent to Lincoln, not to the County of Placer;

(g) The contractor waives and releases all claims against the County of Placer arising out of the contract or the Lincoln-County Project that are not caused by the active negligence of the County;

(h) The contractor must provide statutory waiver and release forms to Lincoln for its progress payments and a statutory unconditional final waiver and release form to Lincoln upon final payment to the contractor;

(i) The contractor must comply with all SRF prevailing wage requirements, including, without limitation, California Labor Code Section 1771, the Davis-Bacon Act and related prevailing wage statutes, Contract Work Hours and Safety Standards Act, Copeland "Anti-Kickback" Act, and Walsh-Healey Public Contracts Act, and also must require its subcontractors to so comply[†];

(j) The contractor must comply with the requirements of 40 CFR § 33.301, the SRF Disadvantaged Business Guidelines, and U.S. Environmental Protection Agency's Program for Utilization of Small, Minority and Women's Business Enterprises, and require its subcontractors to so comply. The USEPA's DBE rule can be accessed at www.epa.gov/osbp. The contractor must retain all records documenting compliance with the required DBE good faith efforts;

(k) The contractor must maintain and retain separate books, records and other material relative to the project until three years after the date of completion of the work, or until the resolution of any dispute, litigation or investigation commenced prior to the end

^{*} This requirement for Bonds does not apply to the CM contract.

[†] **Also, Lincoln must insert in full in each construction contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, those clauses so required in Exhibit 15.**

of such three year period, whichever period is longer (the "Retention Period"). The contractor will require that such books, records, and other material be subject at all reasonable times (at a minimum during normal business hours) to inspection, copying, and audit by Lincoln, Placer County, the State Water Board, the Bureau of State Audits, the United States Environmental Protection Agency (USEPA), the Office of Inspector General, the Internal Revenue Service, the Governor, or any authorized representatives of the aforementioned, and will allow interviews during normal business hours of any employees who might reasonably have information related to such records. At the end of the Retention Period, the contractor agrees to provide all books, records, and other relevant documentation regarding the project held by contractor and each subcontractor to Lincoln, who will provide them to Placer County. Contractor recognizes that County is required by the State Revolving Fund to maintain such records for 36 years after project completion. The contractor agrees to include a similar right regarding audit, interviews, and records retention in all subcontracts for the work. The provisions of this section will survive the expiration or termination of the construction contract;

(l) The contractor will ensure that Lincoln, Placer County, the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable and safe access to the project site at all reasonable times during construction and will provide appropriate safety equipment for the visitors. Site visits by any of the foregoing will not constitute a delay or justify an extension of the contract time. The contractor acknowledges that the project records and locations are public records, including all reports, payment applications, and supporting documentation submitted to Lincoln or Placer County;

(m) Should a potential archeological or historical resource be discovered during construction of the project, the contractor agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State Water Board has determined what actions should be taken to protect and preserve the resource. The contractor agrees to implement appropriate actions as directed by the State Water Board;

(n) The contractor will immediately notify Lincoln upon discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act;

(o) The contractor and its subcontractors each agree that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of the contract are subject to the rights of Lincoln, Placer County and the State of California as set forth in this section. Lincoln, the County and the State each have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable by the contractor or its subcontractors, the author may copyright the same, except that, as to any such copyrighted work, Lincoln, the County and the State each reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from the contractor or author upon request;

(p) Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The contents of this document do not necessarily reflect the views and policies of the State Water Resources Control Board,

nor does mention of trade names or commercial products constitute endorsement or recommendation for use. (Gov. Code § 7550, 40 CFR § 31.20.);

(q) The contractor will comply with and require its subcontractors to comply with the list of federal laws in Exhibit 16 or any other federal laws as required by the State Water Board;

(r) The contractor, its employees, and subcontractors and their employees may not engage in severe forms of trafficking in persons during the term of the contract, procure a commercial sex act during the term of the contract, or use forced labor in the performance of the contract. The contractor must inform Lincoln and Placer County immediately of any information regarding a violation of the foregoing. The contractor must include this provision in its subcontracts for the work;

(s) The contractor will not contract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". The contractor will not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477);

(t) The contractor certifies to the best of its knowledge and belief, that it and its principals:

(i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(ii) Have not within a three year period preceding this contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (ii) of this certification; and

(iv) Have not within a three year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Suspension and debarment information can be accessed at <http://www.sam.gov>. The contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this contract. The contractor acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the termination, delay or negation of this contract, or pursuance of legal remedies, including suspension and debarment;

(u) The contractor must comply with the following non-discrimination provisions:

(i) During the performance of this contract, the contractor and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

(ii) The contractor and its subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(iii) The contractor and its subcontractors will comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this contract by reference and made a part hereof as if set forth in full.

(iv) The contractor and its subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(v) The contractor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this contract;

(v) The contract is assigned by Lincoln to the County of Placer effective only upon written notice to both Lincoln and the contractor from County accepting such assignment, subject to the prior rights of the surety obligated under a bond relating to the contractor's work; and

(w) Lincoln may terminate the contract at its convenience upon at least seven days prior written notice.

4.3.6 Contractor Retention. In its construction contracts, Lincoln must provide that at least 5% of any progress payments to the contractor be retained until the contractual work reaches either substantial or final completion. Lincoln will be responsible for tracking retention withheld from its contractors and advising the County when any retained amounts should be paid to a contractor per Exhibit 6 and of the applicable amount. Retention from a contractor is solely a liability of Lincoln to the applicable contractor.

4.3.7 Contractor Warranty. For any construction contractor making improvements at the real property of the County, Lincoln will require in the contract that the County is an intended third party beneficiary of the warranty obligations of the contractor, which will include a 1 year period after substantial completion in which the contractor will correct at its cost any non-conforming or defective work performed under that contract.

4.3.8 Audit of Contractor Charges. For any CM or construction contracts or change orders being established on a cost-reimbursable basis subject to a guaranteed maximum price or not-to-exceed amount, Lincoln must have the right under that contract for the Independent Auditor to audit the contractor's charges to verify that they are payable under the contract.

4.3.9 Executed Contracts. Lincoln will promptly provide copies of executed design, consulting, CM or construction contracts for the Lincoln-County Project to the County.

4.3.10 Disputed Contractor Charges. For any CM or contractor work being paid on a cost-reimbursable basis (whether change order work or pursuant to a cost-plus-a-fee contract), Lincoln will timely dispute any contractor's charge to which the County reasonably objects upon valid contractual grounds. Any resolution of such a dispute requires the written approval of the Authorized Representatives of Lincoln and the County.

4.3.11 Preliminary Notices. Lincoln will promptly provide copies of all statutory preliminary notices to the County.

4.3.12 As-Builts. Lincoln will provide County with a complete set of the as-built drawings and other record documents pertaining to any improvements at the SMD 1 WWTP Site.

4.3.13 Terminating a Contractor. Prior to exercising any termination right under a CM or construction contract, Lincoln will consult with the County and obtain County's written approval to terminate the CM or contractor. Lincoln must expeditiously replace any terminated CM or contractor. For any replacement CM or contractor, at least ten days prior to publishing same, Lincoln will provide the bid package or request for proposals, including the proposed contract form, to the County for its review and approval together with Lincoln's proposed publication date. County will have the right, in its reasonable discretion, to require Lincoln to include specific obligations, including, without limit, any obligations required by the State Water Board, for the awardee in the contract documents for a particular scope of work or services, which right must be exercised by the County by written notice delivered to Lincoln at least 5 days prior to the proposed publication date. County will have the same rights to approve the contract award as under Section 4.3.3.

4.3.14 Differing Site Conditions. Lincoln has conducted significant due diligence on the site conditions connected with the various components of the Lincoln-County Project, and has factored into the Capital Charge both the cost for addressing site conditions and the risk that site conditions may vary from those observed. The Capital Charge will not be adjusted for additional Capital Costs resulting from Differing Site Conditions unless and until both the Capital Contingency and the Oversizing Contingency have been fully depleted by Capital Costs. For clarity, the Capital Contingency must be depleted before such costs are charged to the Oversizing Contingency, per Section 4.2.3 above. Lincoln will track all Capital Costs arising from Differing Site Conditions, provide updates to the County of the Capital Costs associated with Differing Site Conditions and their funding from the Capital Contingency or Oversizing Contingency in its monthly report, and provide specific written notification to the County at least ten days before Lincoln will incur Capital Costs due to Differing Site Conditions in an amount that will exceed the remaining balance of the Capital Contingency and Oversizing Contingency. Failure to timely provide such notice will waive Lincoln's right to claim an adjustment of the Capital Charge due to those Differing Site Conditions. Lincoln will promptly provide documentation requested by the County to show its calculation of the requested adjustment to the Capital Charge. If Lincoln requests an increase in the Capital Charge for Differing Site Conditions when allowed under this Agreement, the Parties will negotiate in good faith the amount of adjustment to the Capital Charge, which will be documented in a COJA Change Order signed by the Parties. If the Parties are not able to agree, the dispute will be resolved under Article 7.

4.3.15 Observation and Approval. Lincoln will provide the County and State Water Board staff with access to any part of the Lincoln-County Project under construction for observation at any time. Lincoln will timely provide draft traffic control plans from its contractors to County for review and approval prior to Lincoln's approval of such traffic control plans. Lincoln will give the County two business days notice prior to any acceptance testing or performance testing of the substantially completed construction of the SMD 1 export pump station or Lincoln WWTRF improvements so that County may have staff or consultants observe and participate. In addition, before Lincoln may finally accept the substantially completed construction work at the SMD 1 WWTP Site (including decommissioning of the existing SMD 1 facilities, construction of the emergency containment basin, and the new pump station), Lincoln must obtain County's approval of the substantially completed construction work on those project components and resolve County's punch list issues to County's satisfaction.

(a) Lincoln agrees to ensure that the State Water Board, the Governor of the State, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, the President of the United States, or any authorized representative of the foregoing, will have suitable and safe access to the Lincoln-County Project site at all reasonable times during construction and thereafter for so long as the County remains obligated to the State Water Board under the SRF financing for the Lincoln-County Project. Site visits by any of the foregoing will not constitute a delay or justify an extension of the Project Completion Dates. Lincoln acknowledges that, except for a subset of archeological records, the Lincoln-County Project records and locations are public records, including all of the documents for the SRF financing and all reports, disbursement requests, and supporting documentation submitted to the State Water Board.

4.3.16 Project Schedule. Lincoln agrees to achieve Treatment Substantial Completion by the Treatment Completion Date, Decommissioning Substantial Completion by the Decommissioning Completion Date, and Project Final Completion by the Project Final Completion Date. The Project Completion Dates are subject to extension for County Changes, which include County-responsible delays pursuant to the terms of Section 4.2.5(c), and for Force Majeure Events pursuant to the terms of Section 4.3.17. However, notwithstanding anything to the contrary in this Agreement, no extension of the Project Final Completion Date will be made unless approved by the State Water Board upon a showing of good cause. State Water Board approval of an extension of the Project Final Completion Date must be requested no later than 90 days prior to the Project Final Completion Date. Time is of the essence in completing construction of the Lincoln-County Project within the applicable Project Completion Dates and in commencing the Operations Period. The current anticipated Project Schedule with the different milestones is attached as Exhibit 4.

(a) At least monthly, Lincoln will update the Project Schedule and provide a copy to the County together with an explanation of any material deviations from the prior schedule update. The Project Schedule will be in a format approved by the County and coordinate all major components of the Lincoln-County Project, including Governmental Authority deadlines; permit, procurement, submittal, and long lead item schedules; construction work by trade; and projecting milestone Project Completion Dates consistent with this Agreement.

(b) Lincoln will notify the County within 5 days of any projected slippage in any Project Completion Date and its cause. Lincoln must submit a detailed recovery plan for evaluation and approval by the County within 2 weeks of the notice.

(c) Upon written notice by its Authorized Representative, County may require Lincoln to direct Lincoln's staff, consultants or contractors to work overtime, add manpower or resources and/or re-sequence the work to recover from Lincoln-County Project delays. Likewise, if the State Water Board fails to approve any requested extension of the Project Final Completion Date, Lincoln will be similarly required to accelerate the construction work so as to meet the current Project Final Completion Date. If the applicable Lincoln-County Project delay is qualified as a County Change under Section 4.2.5(c), then the incremental additional Capital Costs for overtime or re-sequenced work will increase the Capital Charge.

(d) If there is a disagreement among the Parties as to whether a delay is a County Change, the dispute will be resolved under Article 7 and the Parties will continue with their obligations under this Agreement without interruption unless both Parties agree to suspend all or a portion of the Lincoln-County Project pending dispute resolution.

4.3.17 Force Majeure Events. Upon occurrence of any Force Majeure Event, Lincoln will notify the County per Section 4.3.16. Upon approval of the State Water Board, the Project Completion Dates will be extended for the number of days of delay from which Lincoln cannot recover under Section 4.3.16(b) to the extent those delays are directly caused by that Force Majeure Event, and the Parties will document the time extension in a COJA Change Order. This extension of time is Lincoln's sole and exclusive remedy against the County with respect to a delay caused by a Force Majeure Event. However, if the entire Lincoln-County Project becomes impossible to complete as a result of a Force Majeure Event, then either Party may terminate this Agreement upon approval of such termination by the State Water Board. If there is a disagreement among the Parties as to whether a delay is a Force Majeure Event or whether a Force Majeure Event renders the entire Lincoln-County Project impossible to complete, the dispute will be resolved under Article 7 and the Parties will continue with their obligations under this Agreement without interruption unless both Parties agree to suspend all or a portion of the Lincoln-County Project pending completion of dispute resolution. If the State Water Board fails to approve an extension of the Project Completion Dates, then Lincoln will accelerate performance of the Lincoln-County Project per Section 4.3.16(c).

4.3.18 Project Sign. Lincoln will place a sign at least four feet tall by eight feet wide made of $\frac{3}{4}$ inch thick exterior grade plywood or other approved material in a prominent location on the Lincoln-County Project site and will maintain the sign in good condition for the duration of the construction of the Lincoln-County Project. The content and location of the sign will be subject to the County's advance approval, and must include the following color logos (available from the State Water Board) and the following disclosure statement:



"Funding for this project has been provided in full or in part by the Clean Water State Revolving Fund through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds."

The Lincoln-County Project sign may include another agency's required promotional information so long as the above logos and disclosure statement are equally prominent on the sign. The sign must be prepared in a professional manner.

4.3.19 Demolition of Storage Building. Prior to the time shown on the Project Schedule for demolition of the storage building near the planned pump station at the SMD 1 WWTP Site, County will remove the contents of that storage building at County's expense. Should County fail to timely commence the removal of those contents, Lincoln will so notify County per Section 4.2.5(c) and if County fails to cure the delay, then Lincoln will be entitled to an equitable adjustment of the Project Completion Dates and Capital Charge per the terms of Section 4.2.5(c).

4.3.20 Cleaning of Existing Treatment Structures. Promptly after Treatment Substantial Completion, County will remove all waste from the existing treatment structures at the SMD 1 WWTP Site in compliance with applicable law. Lincoln acknowledges that such work will take approximately 6 weeks to complete, and Lincoln has accounted for this in the Project Schedule. County will require full access to applicable portions of the SMD 1 WWTP Site including the sludge press building for this work. Should County fail to timely commence or complete the removal of such waste from the existing treatment structures, Lincoln will so notify County per Section 4.2.5(c) and if County fails to cure the delay, then Lincoln will be entitled to an equitable adjustment of the Project Completion Dates and Capital Charge per the terms of Section 4.2.5(c).

4.3.21 Project Completion Report. Lincoln will submit a Project Completion Report in form required by the State Water Board to the County at least 5 days before the due date established by the State Water Board at the time of final inspection of the Lincoln-County Project, provided that County has notified Lincoln in writing at least 5 days before the due date. The "Project Completion Report" must address the following:

- (a) describe the Lincoln-County Project,
- (b) describe the water quality problem the Lincoln-County Project sought to address,
- (c) discuss the Lincoln-County Project's likelihood of successfully addressing that water quality problem in the future, and

- (d) summarize compliance with environmental conditions.

Failure of Lincoln to submit a timely Project Completion Report will be a Material Default, and could subject the County to delayed or disallowed disbursements of the SRF financing or administrative proceedings by the State Water Board, in which case Lincoln will bear the County's costs arising from failure to timely submit the Project Completion Report.

5. Operations Period

5.1 Administration.

5.1.1 Authorized Representatives. Unless the Parties have entered into a further agreement regarding governance of the Regional Facilities providing otherwise, each Party's Authorized Representative will have the authority to represent its Party and make decisions for that Party during the Operations Period, subject to Section 5.4.2.

5.1.2 Project Coordination Team. Unless the Parties have entered into a further agreement regarding governance of the Regional Facilities providing otherwise, the Parties will continue to work together during the Operations Period through the PCT as described in Section 4.1.2.

5.1.3 Lincoln Insurance Obligations. During the Operations Period, Lincoln must meet the insurance requirements set forth in Exhibit 7A. Failure to maintain the required insurance will be a Material Default by Lincoln, and if not timely cured will give County the right, at its election and in addition to any other remedies provided herein, to procure any required insurance on behalf of Lincoln at Lincoln's expense.

5.1.4 Operations Period Reports. In addition to any information to be reported under other provisions of this Agreement, Lincoln will provide the following reports to the County during the Operations Period, in the format approved by the Authorized Representatives:

(a) Quarterly: revenue from Reclaimed Water; the status of the Regional Facilities' compliance with regulatory requirements; total number of EDUs for all customers connected to the Lincoln WWTRF; number of EDUs for new customers connected to the Lincoln WWTRF during the previous quarter; total number of EDUs for all non-residential customers connected to the Lincoln WWTRF but not discharging to the system; current number of EDUs of unconnected but prepaid treatment capacity; how many EDUs of unused treatment capacity remain and breakdown of how the current unused treatment capacity has been allocated (e.g., reserved to County and first-come-first-served); status of any current R&R Projects, Expansion Projects, or other projects affecting the Regional Facilities; and

(b) Annual: general condition of the Regional Facilities' components and their projected remaining useful life; R&R Projects and Expansion Projects completed during the previous year; status of any current R&R Projects, Expansion Projects, or other projects affecting the Regional Facilities; R&R Projects and Expansion Projects anticipated in the coming year; total number of EDUs for all customers connected to the Lincoln WWTRF; number of EDUs for new customers connected to the Lincoln WWTRF during the previous year; total number of EDUs for all non-residential customers connected to the Lincoln WWTRF but not discharging to the system; current number of EDUs of unconnected but prepaid treatment capacity; how many EDUs of unused treatment capacity remain and breakdown of how the

current unused treatment capacity has been allocated (e.g., reserved to County and first-come-first-served); forecast for number of EDUs of additional customers anticipated to be connected to the Lincoln WWTRF in each of the next three years.

(c) Lincoln will provide all documentation and calculations reasonably requested by the County to evidence the information shown in Lincoln's Operations Period reports. County has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of Lincoln relating to the information shown in Lincoln's Operations Period reports.

5.1.5 Repair & Rehabilitation Projects Study. The R&R Study approved by the Parties is attached as Exhibit 9. The Parties will provide for the R&R Study to be updated at least every five years after the commencement of the Operations Period. Each of the Parties will provide needed input, assistance and information for purposes of updating the R&R Study, and any revision to the R&R Study requires the approval of each of the Authorized Representatives prior to being finalized. Each Party will bear its own staff costs in updating the R&R Study, but each Party will share the consultant costs for updating the R&R Study based on the ratio of each Party's Obligated EDUs to the total amount of Obligated EDUs of both Parties at that time.

5.1.6 Study of Future Expansion Projects. The Connection Fee Report approved by the Parties is attached as Exhibit 10. The Parties will provide for the Connection Fee Report to be updated at least every five years after the commencement of the Operations Period. Each of the Parties will provide needed input, assistance and information for purposes of updating the Connection Fee Report, and any revision to the Connection Fee Report requires the approval of each of the Authorized Representatives prior to being finalized. Each Party will bear its own staff costs in updating the Connection Fee Report, but County will be responsible for that portion of the consultant costs in updating the Connection Fee Report that are related to the conveyance facilities outside of Lincoln's boundaries and Lincoln will be responsible for the remaining consultant costs.

5.1.7 Continued Evaluation.

(a) For so long as this Agreement remains in effect, Lincoln will periodically examine the current condition of the Regional Facilities and the projected remaining useful life of its various components. When the current condition and projected remaining useful life indicate that a Regional Facilities' component is within three years of the end of its useful life and requires more than Routine Repair, Lincoln will so notify the County in writing. The Parties will then collaborate to plan for the applicable R&R Project per Section 5.3.2. Lincoln will perform this assessment at its cost at least annually and as needed based on current conditions. As part of this assessment, any changes to the schedule of R&R Projects in the R&R Study will be updated upon mutual written approval of the Authorized Representatives.

(b) For so long as this Agreement remains in effect, Lincoln will periodically examine the actual average dry weather flow of the Parties and the past and projected growth in flows. When average dry weather flow (including both current flows and projected growth) is expected to exceed the total capacity of the Regional Facilities within three years, Lincoln will so notify the County. The Parties will then collaborate to begin the process of planning for the expansion of the Regional Facilities' capacity per Section 5.3.14. Lincoln will perform this assessment at its cost at least annually and as needed based on current commitments and expected growth.

5.1.8 Project Certification. One year after Treatment Substantial Completion, Lincoln will certify to the County whether or not the Lincoln-County Project, as of that date, meets applicable design specifications and effluent limitations. If Lincoln cannot certify that the Lincoln-County Project meets such specifications and limitations at that time, then Lincoln will submit a corrective action report to the County. The corrective action report will include an estimate of the nature, scope, and cost of the corrective action, and a time schedule to expeditiously make all needed corrections, at Lincoln's expense, to allow affirmative certification for the Lincoln-County Project. Failure to submit an affirmative certification or a corrective action report that meets the above requirements and is satisfactory to the County within 14 months of the date of Treatment Substantial Completion will be a Material Default by Lincoln.

5.1.9 Uniform Method of Assigning EDUs. The Parties agree to use the methodology shown in Exhibit 18 in assigning number of EDUs to various kinds of connections to the Regional Facilities.

5.2 Finance.

5.2.1 Operations Charge. After commencement of the Operations Period, County will pay the Operations Charge to Lincoln on the terms of this Agreement. Subject to Section 5.2.1(b), the Operations Charge is initially calculated on a base year of 2011 at a base cost of \$24 per month for each EDU of the County's customers connected to the Regional Facilities. The Operations Charge is adjusted annually on December 31 to reflect changes from the base cost based on an index of total operations costs of comparable facilities, as detailed in Section 5.2.1(a) below. Lincoln represents and warrants that the Operations Charge, in conjunction with the operations and maintenances fees charged to all Lincoln's customers, is adequate to cover Lincoln's reasonable costs of operating the Regional Facilities.

(a) During the Operations Period, on each December 31 the Operations Charge will be adjusted on a percentage basis based on the average percentage change in the total annual operations costs of the following wastewater treatment facilities when compared against the prior year: the City of Roseville's Pleasant Grove wastewater treatment facility, El Dorado Irrigation District's wastewater treatment facility, the City of Placerville's Hangtown Creek water reclamation facility, the City of Grass Valley's wastewater treatment facility, and the City of Willows' wastewater treatment facility. In computing the average percentage change in the total annual operations costs of the foregoing wastewater treatment facilities, the facility having the largest percentage change in total annual operations costs and the facility having the smallest percentage change in total annual operations costs will both be excluded from the calculation of the average percentage change.

(b) As of October 1, 2013, County has 163 EDUs of non-residential customers that are connected to the SMD 1 system but not discharging to it. As to County's connected non-residential customers that do not discharge to the Regional Facilities, the parties agree that County is not obligated to pay the Operations Charge for such non-residential customers until such time that they begin discharging to the Regional Facilities. County will promptly notify Lincoln in writing upon County's discovery of any such non-residential customer discharging to the Regional Facilities, and will report quarterly to City the known status of such non-residential customers as to whether they are discharging to the Regional Facilities.

* For the adjustment in the first year of the Operations Period, the average percentage change will be calculated in comparison to the 2011 base year.

(c) By February 1 of each calendar year of the Operations Period, Lincoln will provide County with reasonable documentation of Lincoln's operating costs (including Routine Repair costs) incurred for the Regional Facilities. On March 1 of every year of the Operations Period, the formula below will be applied to the prior three years of data, except for the first three years of the Operations Period when three years of data is not available, in which case the formula will be applied to the data available for those preceding years. If the formula below results in a credit to County, Lincoln will deposit the amount of such credit in a special account designated for paying County's share of R&R Projects that are not Routine Repair as determined under Section 5.2.3. Any dispute regarding such determination will be resolved per Article 7. If this Agreement is terminated according to its terms, then Lincoln will promptly pay to County any remaining balance in such special account.

Formula

Data Inputs

- A = Lincoln's incurred treatment costs during calendar year
- B = Lincoln's incurred conveyance costs for Regional Facilities during calendar year
- X = EDUs of Lincoln connected customers at end of calendar year
- Y = EDUs of County's connected and discharging customers at end of calendar year
- Z = Operations Charge per EDU for 12 months of that calendar year

For each year, first calculate the Conveyance Cost per EDU and the Treatment Cost per EDU to arrive at Operations Cost per EDU as follows:

$$\begin{aligned} \text{Conveyance Cost per EDU} &= B/Y \\ \text{Treatment Cost per EDU} &= A/(X+Y) \\ \text{Operations Cost per EDU} &= \text{Conveyance Cost per EDU} + \text{Treatment Cost per EDU} \end{aligned}$$

Next, for each year calculate the Per EDU Difference and the Annual Aggregate Differential, as follows:

$$\begin{aligned} \text{Per EDU Difference} &= Z - [\text{Operations Cost per EDU}] \\ \text{Annual Aggregate Differential} &= [\text{Per EDU Difference}] \times Y \end{aligned}$$

Finally, calculate the County's credit as follows:

$$\text{County Credit} = \text{Add each of the 3 years' Annual Aggregate Differential together and divide sum by 3. If a positive value, then the resulting value is credited to County.}$$

Example

Year 1

A =	\$5,300,000
B =	\$350,000
X =	18848
Y =	8094
Z =	\$ 294.60 (\$24.55 x 12 months)
Conveyance Cost per EDU =	\$43.24

Treatment Cost per EDU=	\$196.72
Operations Cost per EDU =	\$239.96
Per EDU Difference =	\$54.64
Annual Aggregate Differential =	\$442,249.80

Year 2

A =	\$7,200,000
B =	\$357,000
X =	19225
Y =	8256
Z =	\$300.48 (\$25.04 x 12 months)
Conveyance Cost per EDU =	\$43.24
Treatment Cost per EDU=	\$262.00
Operations Cost per EDU =	\$305.24
Per EDU Difference =	\$(4.76)
Annual Aggregate Differential =	(\$39,302.51)

Year 3

A =	\$7,015,000
B =	\$364,140
X =	19686
Y =	8454
Z =	\$307.68 (\$25.64 x 12 months)
Conveyance Cost per EDU =	\$43.07
Treatment Cost per EDU=	\$249.29
Operations Cost per EDU =	\$292.36
Per EDU Difference =	\$15.32
Annual Aggregate Differential =	\$129,495.25

County Credit \$177,480.85

5.2.2 Payment of Operations Charge. Lincoln will send the County an invoice for the Operations Charge quarterly, with payment due within 30 days after the later of the last calendar day of that quarter or receipt of Lincoln's invoice. However, during any period in which there is an uncured Material Default by Lincoln after notice pursuant to Section 6.5, the County may withhold payment of its Operations Charge until such time that Lincoln has cured the Material Default.

5.2.3 Funding Repair & Rehabilitation Projects.

(a) Each Party has developed a plan for funding its obligation to pay for R&R Projects and each plan is hereby approved by the other Party. The County's plan is

attached as Exhibit 11 and Lincoln's plan is attached as Exhibit 12. A Party may change its funding plan for the R&R Projects with the advance written approval of the other Party's Authorized Representative.

(b) Without limiting Section 5.3.2, each Party is solely responsible for paying its own share of the cost of R&R Projects, as follows:

(i) the cost of Routine Repair is Lincoln's sole obligation and covered by the Operations Charge;

(ii) to the extent that (i) does not apply, then each Party shares the cost of the R&R Projects as follows:

(1) for any R&R Project involving a Lincoln WWTRF component shown as an existing Lincoln WWTRF component on the schedule of project components in the R&R Study up until the point prior to the complete replacement (or, if mutually approved by the Authorized Representatives, a major refurbishment) of such component, the allocation is based on "Formula A" below:

Formula A	
X =	Cost of R&R Project
A =	Lincoln number of Committed EDUs at time of R&R Project
B =	County number of Committed EDUs at time of R&R Project
Y =	Project Year in the format 1999, for example
Lincoln share of R&R Project costs =	$X * (11 / (Y - 2004) + (Y - 2015) / (Y - 2004) * A / (A + B))$
County share of R&R Project costs =	$X * ((Y - 2015) / (Y - 2004) * B / (A + B))$
Example – cost sharing for R&R Project for repairing wall pump for existing oxidation ditch for \$100,000 in year 2024	
X =	\$100,000
A =	20,000 Committed EDUs
B =	8,000 Committed EDUs
Y =	2024
Lincoln share of R&R Project costs =	\$87,143
County share of R&R Project costs =	\$12,857
Total =	\$100,000

(2) for any R&R Project involving a Lincoln WWTRF component shown as a new Lincoln WWTRF component on the schedule of project components in the R&R Study, the allocation is based on "Formula B" below:

Formula B	
X =	Cost of R&R Project
A =	Lincoln number of Committed EDUs at time of R&R Project
B =	County number of Committed EDUs at time of R&R Project
Lincoln share of R&R Project costs =	$X * A / (A + B)$

County share of R&R Project costs	=	$X*B/(A+B)$
Example – cost sharing for R&R Project for repairing wall pump of new oxidation ditch 3 for \$100,000 in year 2024		
X	=	\$100,000
A	=	20,000 Committed EDUs
B	=	8,000 Committed EDUs
Lincoln share of R&R Project costs	=	\$71,429
County share of R&R Project costs	=	\$28,571
Total	=	\$100,000

(3) for any R&R Project on a Lincoln WWTRF component from and after the point such component is completely replaced (or, if mutually approved by the Authorized Representatives, undergoes a major refurbishment), the allocation is based on "Formula B" above; and

(4) for any R&R Project in the Regional Facilities outside the Lincoln WWTRF, the allocation is based on "Formula C" below:

Formula C		
X	=	Cost of R&R Project
A	=	Lincoln number of Committed EDUs at time of R&R Project that are directly affected by that R&R Project
B	=	County number of Committed EDUs at time of R&R Project that are directly affected by that R&R Project
Lincoln share of R&R Project costs	=	$X*A/(A+B)$
County share of R&R Project costs	=	$X*B/(A+B)$
Example – cost sharing for a \$100,000 R&R Project for repairing pipe that serves 70% of Lincoln's Committed EDUs and 100% of County's Committed EDUs		
X	=	\$100,000
A	=	14,000 Committed EDUs directly affected by R&R Project
B	=	8,000 Committed EDUs directly affected by R&R

		Project
Lincoln share of R&R Project costs	=	\$63,636
County share of R&R Project costs	=	\$36,364
Total	=	\$100,000

(c) For any amount owed by County for R&R Projects, to the extent that County has any remaining balance in the special account provided in Section 5.2.1(c), County may elect to apply such balance in full or partial satisfaction of the amount due in lieu of paying such funds to Lincoln.

5.2.4 Connection Fees. Each Party is solely responsible for establishing and collecting its own connection fees for its customers connecting to the Regional Facilities. County's connection fees will include at least the amount of the Regional Sewer Treatment Connection Fee and Regional Sewer Conveyance Connection Fee as set forth in the Connection Fee Report.

5.3 Initial Operations & Maintenance Period.

5.3.1 Operations and Maintenance. Subject to the provisions of this Agreement, Lincoln has the sole responsibility to operate and maintain the Regional Facilities (including the emergency storage basin at the SMD 1 WWTP Site) during the Operations Period, including compliance with regulatory and permit requirements. Lincoln agrees to sufficiently and properly staff, operate and maintain all portions of the Regional Facilities during its useful life in accordance with all applicable state and federal laws, rules and regulations and consistent with industry standards as applicable to the design of the Regional Facilities. Unless otherwise agreed in a future agreement, Lincoln will own the components of the Regional Facilities during the Operations Period, though the County will continue to own all real property associated with the Project that it owns at the time of this Agreement. All costs associated with the operations and maintenance of the Regional Facilities during the Operations Period, including without limitation treating influent, disposal of waste and reclaimed water, Routine Repair, costs of any replacement water to public waterways impacted by the cessation of discharge from the SMD 1 facility that is required by regulatory agencies beyond 0.5 cubic feet per second, payments due to contractors and suppliers, legal costs, insurance costs, costs of permits and approvals, and costs of Lincoln's own staff are Lincoln's sole responsibility and covered by the Operations Charge. In addition to the Operations Charge, the County will reimburse Lincoln for Lincoln's actual costs of replacement water to public waterways impacted by the cessation of discharge from the SMD 1 facility that is required by regulatory agencies in an amount of up to 0.5 cubic feet per second for a period not to exceed 10 years. Reimbursement of said costs does not place the responsibility to secure replacement water on the County, and Lincoln is solely responsible to provide adequate replacement water in accordance with all mitigation measures and regulatory agency requirements. Each Party will establish its own user fee amounts for wastewater treatment.

(a) Within five years of Treatment Substantial Completion, County will develop, implement and complete a project to preserve or restore stream habitat within the

Coon Creek Watershed at County's cost. County will perform this obligation so as to satisfy condition #1 in the Conditional Dismissal of Protest of Change Petition for Wastewater Discharge Permit 0071 (WW0071) Filed by the City of Lincoln in Placer County, letter dated August 16, 2013 from Tina Bartlett of the California Department of Fish and Wildlife to Mark Miller of the City of Lincoln (attached as Exhibit 17). The remaining obligations in the letter attached as Exhibit 17 are the sole obligation of Lincoln. County will consult with Lincoln and the California Department of Fish and Wildlife in the development and implementation of the stream habitat restoration or preservation plan. Should County fail to perform the obligation of this Section 5.3.1(a), County will be solely responsible for any costs imposed on either County or Lincoln that directly result from such failure to perform, including any resulting regulatory actions by the Department of Fish and Wildlife.

5.3.2 Repair & Rehabilitation Projects.

(a) Subject to the provisions of this Agreement, Lincoln has the sole responsibility to perform any R&R Projects, including without limitation all design, permitting, construction management, bidding, contracting, environmental review and mitigation, and contractor claims resolution. Either Party may notify the other of the need for a R&R Project, upon which the Parties will collaborate to plan for the necessary R&R Project(s). Lincoln must obtain County's approval of any R&R Project that either (i) is not described in the R&R Study, (ii) will exceed the estimated cost for such project in the R&R Study, or (iii) is needed prior to the time for such project shown in the R&R Study.

(b) Within 30 days of receipt of Lincoln's separate invoice, the County will reimburse Lincoln for the undisputed amount of County's share of Lincoln's incurred costs for R&R Projects as determined per Section 5.2.3, though costs that are specifically excluded under the definition of "Capital Costs" in Article 1 are not reimbursable by County for R&R Projects. Any disputes regarding reimbursement will be resolved per Article 7. The costs of R&R Projects that are not Routine Repair are not covered by the Operations Charge.

(c) If Lincoln fails to undertake a R&R Project by the time shown in the R&R Study for that component of the Regional Facilities or if the County identifies a needed R&R Project, provided that in either case the actual condition of the applicable component of the Regional Facilities at that time would justify a R&R Project, then County may notify Lincoln in writing of the need to commence the applicable R&R Project(s). If within ten days of the notice Lincoln fails to either (i) commence dispute resolution proceedings regarding the need for that R&R Project per Article 7 or (ii) give reasonable assurances to the County that Lincoln will timely perform the needed R&R Project, or if Lincoln fails to diligently prosecute the R&R Project to completion after giving assurances to the County or commencing the R&R Project, then Lincoln will be in Material Default, and, without limiting any other remedy, upon the County giving seven days further written notice to Lincoln, the County may perform the applicable R&R Project(s) on the following terms:

(i) By an irrevocable license, the County may take possession of Lincoln's real and personal property interests in the Regional Facilities as reasonably necessary to perform the R&R Project(s), with the County surrendering possession at such time as County has completed the R&R Project.

(ii) The County may exercise its rights under Sections 5.3.5(f) and 5.3.6(i) and take by assignment those of Lincoln's contracts with designers or contractors for the R&R Project(s) as elected by County.

(iii) The County may complete the applicable R&R Project(s) by whatever reasonable methods County may deem expedient.

(iv) The County's costs incurred per Section 5.3.2(c) (including any costs paid by County to a contractor or surety to cure any default by Lincoln under its contracts for the R&R Project(s)) will be charged to Lincoln as follows:

(1) the incremental amount of County's costs exceeding the estimate for that R&R Project in the R&R Study will be allocated wholly to Lincoln; and

(2) the remaining amount of County's costs for the R&R Project will be allocated between the County and Lincoln as provided in Section 5.2.3(b).

(3) County will notify Lincoln in writing of the costs to be charged to Lincoln under this Section 5.3.2, including reasonable back-up documentation of such costs. County will also provide all documentation reasonably requested by Lincoln to evidence such costs, and Lincoln has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of County relating to those costs. Lincoln will pay the amounts due from it to the County within 30 days of County's notice under this paragraph. Past due amounts will bear interest from the due date.

(4) The County may offset any part of the costs allocated to Lincoln per this Section 5.3.2 and unpaid against any amounts due from County to Lincoln under this Agreement or applicable law.

(d) If Lincoln has complied with this Agreement in undertaking and diligently prosecuting a necessary R&R Project, and County has either failed to participate in the dispute resolution process of Article 7 regarding any disagreements or failure to act relating to that R&R Project, or if, after the conclusion of any related mediation under Section 7.6, County unreasonably withholds its approval of that R&R Project as determined by a court of competent jurisdiction per Section 8.20, then:

(i) Section 5.3.2(c) will not apply;

(ii) County will be in Material Default; and

(iii) Lincoln may undertake the applicable R&R Project, with County's share of the costs for that R&R Project under this Agreement bearing interest from the date payment is past due.

(e) Also, if Lincoln has complied with this Agreement in undertaking and diligently prosecuting an approved R&R Project and County fails to reimburse Lincoln for County's share of the costs of that R&R Project per this Agreement, then if not resolved under Article 7, County will be in Material Default and County's share of the costs for that R&R Project under this Agreement will bear interest from the date payment is past due.

(f) In the event of any damage to or destruction of the Regional Facilities caused by the perils covered by property insurance, the net proceeds thereof shall be applied to the reconstruction, repair or replacement of the damaged or destroyed portion of the Regional Facilities. Lincoln must begin such reconstruction, repair or replacement as

expeditiously as possible, and the Party insuring that portion of the Regional Facilities must pay out of the net insurance proceeds all Lincoln's costs and expenses in connection with such reconstruction, repair or replacement so that the same will be completed and the Regional Facilities will be free and clear of all claims and liens. If such net proceeds are insufficient to enable Lincoln to pay for the reconstruction, repair or replacement, then the Parties will each provide additional funds to restore or replace the damaged portions of the Regional Facilities on the same basis as under Section 5.2.3, though costs that are specifically excluded under the definition of "Capital Costs" in Article 1 are not reimbursable by the County.

5.3.3 Requests for Bids or Proposals. At least 30 days prior to publishing same, Lincoln will provide the bid package or request for proposals, including the proposed contract form, for each contract proposed for the operation, maintenance or repair of the Regional Facilities to the County for review and approval together with Lincoln's proposed publication date. Lincoln will consult with the County in determining the specific obligations for the awardee in the contract documents for a particular scope of work or services.

5.3.4 Approval of O&M Contracts. Any contract that relates to the operation, maintenance or repair of the Regional Facilities must be permitted under Section 4.2.9. For any such contract not already entered by Lincoln prior to effective date of this Agreement that has a value in excess of \$100,000, the Authorized Representative of the County must approve the contract value or price prior to Lincoln executing such contract and with at least ten days advance notice from Lincoln of the proposed contract value or price, such approval not to be unreasonably withheld. The Authorized Representative of the County must approve any contract amendment increasing the contract value, price or term of any operation, maintenance or repair contract for the Regional Facilities by more than \$100,000 after receiving at least ten days advance notice from Lincoln of the proposed contract amendment, such approval not to be unreasonably withheld.

5.3.5 Required Design Contract Provisions. In any design contract for a R&R Project, Lincoln must include the following provisions, with any deviations (other than changes to conform to contract references or contract-defined words or phrases) in a particular contract specifically approved in writing by the County:

- (a) the County of Placer will be an intended third party beneficiary of the contract;
- (b) the design firm or consultant will defend and indemnify the County of Placer to the same extent that it defends and indemnifies Lincoln;
- (c) the design firm or consultant will carry insurance meeting at least the requirements set forth in Exhibit 7C;
- (d) the design firm or consultant agrees to look solely to Lincoln and not to the County of Placer for payment under that contract;
- (e) the design firm or consultant will waive and release all claims against the County of Placer arising out of the contract or the project that are not caused by the active negligence of the County;

(f) the contract is assigned by Lincoln to the County of Placer effective only upon written notice to both Lincoln and the design firm or consultant from County accepting such assignment; and

(g) Lincoln may terminate the contract at its convenience upon at least seven days prior written notice.

5.3.6 Required Contractor Contract Provisions. In its contracts with any operations, maintenance or R&R Project contractors for the Regional Facilities, Lincoln must include the following provisions, with any deviations (other than changes to conform to contract-defined words or phrases) in a particular contract specifically approved in writing by the County:

(a) To the fullest extent permitted by law, the contractor will defend, indemnify and hold Lincoln, the County of Placer and their respective officers, directors, members, employees and affiliates ("Owner Indemnitees") harmless from any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) arising out of, or resulting from, the acts or omissions, in whole or in part (including breach of contract), of the contractor, its subcontractors and their respective officers, directors, partners, agents, employees or anyone for whom they may be liable. Notwithstanding the above, the contractor will not be required to defend, indemnify and hold harmless an Owner Indemnitee for the indemnitee's own active negligence, sole negligence or willful misconduct, provided that the contractor will continue to indemnify and defend the indemnitee to the extent and in proportion to the degree that the indemnitee is not actively negligent. The indemnification obligations set forth in this paragraph will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the contractor under insurance policies, workers compensation laws, disability benefit laws or other employee benefit laws.

(b) The contractor will defend, indemnify, and hold Lincoln and the County of Placer harmless from any and all claims, stop payment notices, or connected legal proceedings filed by the contractor or its subcontractors, suppliers, or other persons or entities claiming by or through the contractor by reason of having provided labor, materials, and equipment relating to the project;

(c) The contractor will carry insurance meeting at least the requirements set forth in Exhibit 7B;

(d) The contractor agrees to look solely to Lincoln and not to the County for payment under that contract;

(e) Statutory preliminary notices and any stop payment notices must be sent to Lincoln, not to the County of Placer;

(f) The contractor waives and releases all claims against the County of Placer arising out of the contract or the project that are not caused by the active negligence of the County;

(g) The contractor must comply with all prevailing wage requirements and require its subcontractors to so comply;

(h) The contractor must retain all relevant documentation, including without limitation any books, documents, papers and records for the purpose of making audits, examination, excerpts and transcriptions, and allow access to same by Lincoln, the County, or other designated representatives. The contractor must maintain all required records for three years after final payment is made and all other pending matters are closed. The contractor also must require its subcontractors to comply with these documentation requirements;

(i) The contract is assigned by Lincoln to County effective only upon written notice to both Lincoln and the contractor from County accepting such assignment; and

(j) Lincoln may terminate the contract at its convenience upon at least seven days prior written notice.

5.3.7 Executed Contracts. Lincoln will promptly provide copies of executed operation, maintenance or R&R Project contracts for the Regional Facilities to the County.

5.3.8 Emergency Notification. Lincoln will promptly notify the County of material problems in the operation of the Regional Facilities affecting the County and will immediately notify the designated representatives of the County of any emergency situation affecting the Regional Facilities components or the provision of wastewater treatment to the County.

5.3.9 Monitoring Wastewater.

(a) The Regional Facilities have been designed to continually measure the wastewater flow coming into the Regional Facilities at the point of connection with the County and at the point of entry into the Lincoln WWTRF, and to report flow data to each of the Parties. Lincoln will construct and maintain the Lincoln-County Project and Regional Facilities so that the designed systems for measuring flow accurately and continually provide data to the Parties on the volume of influent entering the Regional Facilities at the County's point of connection and at the point of entry into the Lincoln WWTRF.

(b) Promptly after Treatment Substantial Completion, Lincoln will engage an Independent Monitor approved by the County under a contract approved by the County. The Independent Monitor will monitor the amount of wastewater flow of the Parties, level of biological load of the wastewater coming into the Regional Facilities at both the point of connection with the County and at the point of entry into the Lincoln WWTRF, and the volume of Reclaimed Water. The Independent Monitor will also assess whether the flow data reported from the Regional Facilities' systems is accurate and make recommendations to the Parties for any needed adjustments to the measurement systems. Both Parties will allow the Independent Monitor access to the Regional Facilities for purposes of fulfilling its role. The Independent Monitor will evaluate the wastewater flow, biological load, and volume of Reclaimed Water as frequently as the PCT may determine, but no less than quarterly. After each evaluation, the Independent Monitor will issue reports on its findings, in a format approved by the PCT, to both Parties. Any replacement Independent Monitor must be approved by the County under a contract approved by the County. The cost of the Independent Monitor will be borne by Lincoln and is covered by the Operations Charge.

5.3.10 Wastewater "As Is". Except as qualified in this Section 5.3.10, the County will not be required to pre-treat its wastewater covered by this Agreement, which Lincoln will accept "as is" for treatment. The County will remain responsible for enforcing compliance by

County's customers with applicable laws, regulations or permits related only to wastewater collection and conveyance to the point of connection to the Regional Facilities. However, for the duration of the Operations Period, County assigns to Lincoln any and all rights the County has to require County's customers to comply with applicable law, regulation or permit related to wastewater conveyance and treatment from and after the point of connection to the Regional Facilities. The County and Lincoln will cooperate and coordinate efforts to provide for the appropriate inspections, monitoring and enforcement of County customers' wastewater. For at least the first five years of the Operations Period, there will be no adjustment of the Operations Charge based on differing levels of biological load in the wastewater coming into the Regional Facilities for treatment. After the first five years of the Operations Period, the Parties will evaluate the biological load of the County's wastewater in comparison with the biological load of Lincoln's wastewater to determine whether any adjustment of the Operations Charge is appropriate and mutually acceptable.

5.3.11 Initial Capacity Allocation. After Treatment Substantial Completion, the County will be entitled to use the amount of the Initial County Capacity of the Regional Facilities for wastewater treatment and disposal.

5.3.12 Guarantee of Capacity. Lincoln guarantees that, starting upon Treatment Substantial Completion, the County will be able to use the full amount of conveyance and treatment capacity to which the County is entitled under this Agreement from its point of connection to the Regional Facilities to the completion of wastewater treatment at the Lincoln WWTRF for the entire Operations Period.

5.3.13 Claiming Uncommitted Treatment Capacity.

(a) After Treatment Substantial Completion, the Regional Facilities will have approximately 1.4 MGD of unused treatment capacity, of which 0.5 MGD is committed to Lincoln with the uncommitted balance of 0.9 MGD being available for future use. For a period of one year from Treatment Substantial Completion, Lincoln will reserve an additional 0.4 MGD average dry weather flow of capacity from the existing uncommitted treatment capacity at the Regional Facilities beyond the Initial County Capacity for County purchase. County may claim any part of this reserved additional capacity in one or more instances during the period by notifying Lincoln in writing of the amount requested and paying Lincoln the Regional Sewer Oversizing Connection Fee and the Regional Sewer Treatment Connection Fee, after which Lincoln will immediately make available and reserve the additional capacity exclusively to County.

(b) For the remaining uncommitted capacity of the Regional Facilities, Lincoln will allow County to claim any part of that uncommitted capacity on a first-come, first-served basis with Lincoln's other customers. The County may claim a requested amount of uncommitted capacity in excess of 0.01 MGD (526 EDUs) at the Regional Facilities by notifying Lincoln in writing. If there is insufficient available capacity for the County's request, Lincoln will notify the County in writing of how much capacity, if any, is available, which the County may accept in writing. The County will then pay Lincoln the Regional Sewer Oversizing Connection Fee and the Regional Sewer Treatment Connection Fee, after which Lincoln will immediately make available and reserve that amount of additional capacity exclusively to the County. For use of uncommitted capacity less than 0.01 MGD, County may pay Lincoln the Regional Sewer Oversizing Connection Fee and the Regional Sewer Treatment Connection Fee for those EDUs without advance notice of request, after which Lincoln will immediately make available and reserve that amount of additional capacity exclusively to the County.

5.3.14 Expanding Capacity of Regional Facilities.

(a) When either or both of the Parties determine that an Expansion Project is required, the Parties will collaborate to begin the process of planning for the necessary Expansion Project(s) and determining roles, responsibilities, and appropriate connection fees and sewer rate increases.

(b) For Expansion Projects that increase the treatment capacity and/or conveyance capacity of both Parties, both Parties will share the project costs based on the ratio of each Party's additional treatment capacity to the total amount of additional treatment capacity, measured in EDUs, with each Party solely bearing the cost of any increase to its conveyance capacity. The specific roles and responsibilities of the Parties for any Expansion Project increasing the treatment capacity and/or conveyance capacity of both Parties will be addressed in a future agreement.

(c) For an Expansion Project that only increases the treatment capacity and/or conveyance capacity of Lincoln, Lincoln will undertake that Expansion Project and Lincoln alone will bear all the project costs.

(d) Lincoln agrees to undertake any Expansion Project requested by the County for the expansion of the County's treatment and/or conveyance capacity, and the County agrees to reimburse Lincoln's incurred costs for that project that are allocable to the expansion of the County's treatment and/or conveyance capacity no later than 180 days of Lincoln's written request. The specific roles and responsibilities of the Parties, including payment provisions, for any Expansion Project increasing the treatment and/or conveyance capacity of the County will be addressed in a future agreement between the Parties.

(e) Provided that the County has proposed agreement terms that are commercially reasonable and presented in good faith, if Lincoln fails to undertake an Expansion Project requested by the County and enter into an agreement with the County for that Expansion Project within four months of the County's request for the Expansion Project, then upon the County giving seven days further written notice to Lincoln the County may perform the applicable Expansion Project on the following terms:

(i) By an irrevocable license, the County may take possession of Lincoln's real and personal property interests in the Regional Facilities as reasonably necessary to perform the applicable Expansion Project, with the County surrendering possession at such time as County has completed the Expansion Project.

(ii) The County may complete the applicable Expansion Project by whatever reasonable methods the County may deem expedient at the County's sole cost. The County will promptly cause to be repaired any damage to the Regional Facilities (including the Lincoln WWTRF) to the extent caused by its construction work. The County will also indemnify and hold Lincoln harmless from and against any and all third-party claims, losses, damages, liabilities and expenses to the extent caused by or resulting from County's construction work for the Expansion Project, except to the extent of the active negligence or willful misconduct of Lincoln or those for whom it is responsible.

(iii) Any reasonable legal costs incurred by the County or Lincoln in connection with and/or in enforcing this Section 5.3.14(e) will recoverable by the

prevailing party in the action. The County may offset any part of those costs against any amounts due from County to Lincoln under this Agreement or applicable law.

(f) Additional treatment and/or conveyance capacity built for the County is reserved to the County exclusively for its sole use in connecting its customers.

5.3.15 Regulatory Requirements.

(a) If a Regulatory Change or Regulatory Infraction increases Lincoln's costs of operating the Regional Facilities during the Operations Period to an extent not sufficiently addressed by the adjustments of the Operations Charge allowed under Section 5.2.1(a), then each of the Parties will bear a pro rata share of those increases in cost based on the ratio of each Party's Obligated EDUs to the total amount of Obligated EDUs of both Parties at that time. Lincoln will notify the County of the increased costs described above and the causes of them, including as back-up a breakdown of the additional operating costs. Lincoln will provide all documentation and calculations reasonably requested by the County to justify the determination of the increased operating costs, and the County has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of Lincoln relating to the increased costs. If the Authorized Representatives of the Parties are unable to agree on the amount of the increased operating costs to be shared by the County, the amounts will be resolved by the dispute resolution procedures of Article 7, and the decision-makers will be charged with determining the most accurate amount of the increased costs described above and each Party's pro rata share of those costs.

(b) If a Regulatory Change will require additional capital expenditures to change the Regional Facilities infrastructure to comply with applicable law, Lincoln will notify the County of the situation and the Parties will then collaborate to plan for the necessary capital project(s) to bring the Regional Facilities into regulatory compliance and determining roles, responsibilities, and appropriate connection fees and sewer rate increases. Both Parties will share the project costs for such capital projects based on the ratio of each Party's Obligated EDUs to the total amount of Obligated EDUs of both Parties. The specific roles and responsibilities of the Parties for any future capital projects needed to bring the Regional Facilities into regulatory compliance will be addressed in a future agreement between the Parties.

(c) Subject to Section 5.3.15(d), if Lincoln fails to undertake a capital project necessitated by a Regulatory Change and enter into an agreement with the County for that project within six months of the date on which the upcoming Regulatory Change was first announced by the applicable governmental authority, then Lincoln will be in Material Default, and, without limiting any other remedy, upon the County giving seven days further written notice to Lincoln the County may perform the applicable capital project on the following terms:

(i) By an irrevocable license, the County may take possession of Lincoln's real and personal property interests in the Regional Facilities as reasonably necessary to perform such capital project, with County surrendering possession at such time as County has completed such capital project.

(ii) The County may complete such capital project by whatever reasonable methods the County may deem expedient.

(iii) The County's costs incurred per Section 5.3.15(c) will be charged to Lincoln as follows:

(1) Any legal costs incurred by the County in enforcing this Section 5.3.15 will be Lincoln's sole responsibility;

(2) the remaining amount of County's costs for the capital project will be allocated between the County and Lincoln based on the ratio of each Party's Obligated EDUs to the total amount of Obligated EDUs of both Parties.

(3) County will notify Lincoln in writing of the costs to be charged to Lincoln under this Section 5.3.15(c), including reasonable back-up documentation of such costs. County will also provide all documentation reasonably requested by Lincoln to evidence such costs, and Lincoln has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of County relating to those costs. Lincoln will pay the amounts due from it to the County within 30 days of County's notice under this paragraph. Past due amounts will bear interest.

(iv) The County may offset any part of the costs allocated to Lincoln per this Section 5.3.15 and unpaid against any amounts due from County to Lincoln under this Agreement or applicable law.

(d) If County has failed to participate in the dispute resolution process of Article 7 regarding any disagreements or failure to act relating to the capital project or the proposed agreement for that project, or if, after the conclusion of any mediation under Section 7.6, County unreasonably withholds its approval of the capital project as determined by a court of competent jurisdiction per Section 8.20, then:

(i) Section 5.3.15(c) will not apply;

(ii) County will be in Material Default; and

(iii) Lincoln may undertake the applicable capital project, with County's share of the costs for that capital project under this Agreement bearing interest from the date payment is past due.

5.3.16 Joint Debt Issuance Policy. The Parties have developed a joint debt issuance policy to govern how the Parties would pursue any joint debt financing of R&R Projects, Expansion Projects or capital projects necessary due to a Regulatory Change, including the types of approved debt mechanisms, the agreed level of risk for using a particular debt mechanism, and the roles and responsibilities of the Parties in arranging joint debt financing. The final joint debt issuance policy approved by the Parties is attached as Exhibit 13. A failure by a Party to follow the approved joint debt issuance policy in incurring joint debt for a R&R Project, Expansion Project or capital project necessary due to a Regulatory Change is a Material Default. Changes to the joint debt issuance policy require the approval of both Parties' Authorized Representatives.

5.3.17 Reclaimed Water.

(a) Each Party is allocated a share of the Reclaimed Water equal to its Proportionate Flow in that quarter.

(b) Each Party has the right to dispose of its share of Reclaimed Water in accordance with applicable law as it sees fit.

(c) During the Operations Period, Lincoln will dispose of all Reclaimed Water at its own expense (covered by the Operations Charge) in accordance with applicable law, unless the County elects to make alternative arrangements for disposing of its share of Reclaimed Water by written notice to Lincoln. If the County does not make alternative arrangements and Lincoln is able to sell any part of the County's share of Reclaimed Water, Lincoln will keep all the revenue.

(d) Lincoln will report the total volume of Reclaimed Water generated by the Regional Facilities to the County on a monthly basis. The actual volume of Reclaimed Water will be used for calculating revenues under this Section 5.3.17, provided that the County may challenge the accuracy of the flow data being reported by Lincoln if it has proof that the reported data is not accurate or if the Independent Monitor's report shows a discrepancy in the volume of Reclaimed Water reported by Lincoln. The County has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of Lincoln relating to Reclaimed Water.

(e) If the County elects to build one or more pipelines to dispose of its share of Reclaimed Water, Lincoln will reasonably cooperate with the County to allow the construction of the required pipelines and connection to the Lincoln WWTRF. The County will pay all costs required for that construction and connection and will promptly cause to be repaired any damage to the Lincoln WWTRF to the extent caused by such construction work. The County will also defend, indemnify and hold Lincoln harmless from and against any and all third-party claims, losses, damages, liabilities and expenses to the extent caused by or resulting from such construction, except to the extent of the active negligence or willful misconduct of Lincoln or those for whom it is responsible. Prior to building one or more such pipelines, the County will meet and confer with City regarding the location and construction. If Lincoln reasonably objects to the proposed route of such pipeline(s), the Parties will resolve the matter per Article 7.

(f) For information only, each Party will notify the other of any arrangements it makes to sell Reclaimed Water. Provided that a Party may not enter a transaction with the notifying Party's buyer at a unit price lower than the unit price charged by the notifying Party to that buyer, the other Party may enter further transactions with that buyer to sell its share of Reclaimed Water if that buyer desires additional water beyond what the notifying Party has agreed to provide.

(g) Revenue earned by the County for its share of Reclaimed Water has no impact on the Operations Charge or any other amounts that the County is obligated to pay to Lincoln.

5.4 Continued Operations and Maintenance. Unless and until the Parties agree upon a different governance structure, the provisions of this Agreement governing the initial Operations Period will continue to apply after the completion of the first five years of the Operations Period, subject to the following subsections.

5.4.1 Oversight Committee.

(a) Composition. After the fifth anniversary of Treatment Substantial Completion, the Parties will form an "Oversight Committee" consisting of two members of the County's Board of Supervisors and two members of Lincoln's City Council. A Party may replace either of its representatives on the Oversight Committee upon notice to the other Party.

(b) Function. The Oversight Committee provides elected official oversight of the operations of the Regional Facilities and the activities of the PCT and Authorized Representatives. The Oversight Committee will receive the reports described in Section 5.1.4, be briefed on Regional Facilities operations and needs by the staff of Lincoln and the County at their regular meetings, consider any Major Decisions proposed by either Party, and provide such recommendations and advice regarding Major Decisions as they deem appropriate to their respective board or council. The Oversight Committee does not have independent authority to direct the operations of the Regional Facilities, but will advise the County's Board of Supervisors and Lincoln's City Council as to the Major Decisions that require board and council approval.

(c) Meetings. The Oversight Committee will meet at least quarterly, and by resolution may provide for holding regular meetings at more frequent intervals. The date, hour and place of each such meeting will be fixed by resolution of the Oversight Committee. All meetings of the Oversight Committee, whether regular or special, must be called, held, noticed, agendas posted, and conducted in accordance with applicable law, including the Ralph M. Brown Act (California Government Code Sections 54950 et seq.). The Oversight Committee will appoint a chairperson to conduct its meetings. Decisions of the Oversight Committee, which are limited to those actions specified in this Section 5.4.1(c), will be by majority vote of members of the Oversight Committee, with each member having one vote, and with a quorum of at least one member from each Party required at the meeting in order to approve an action (other than to adjourn). A tie vote results in non-approval of the proposed action.

5.4.2 Major Decisions.

(a) Enumeration of Major Decisions. "Major Decisions" consist of the following decisions proposed by either or both Parties, provided that a proposed action that is reasonably necessary to avoid violating a state or federal permit, permit requirement, statute or regulation is not a "Major Decision" requiring approval of the Board of Supervisors and City Council:

(i) Approving the participation of the City of Auburn or any other public entity in the MWPRS Project;

(ii) Changing the Operations Charge, other than the adjustments contemplated under Section 5.2.1;

(iii) Approving a R&R Project that (i) is not described in the R&R Study, (ii) will exceed the estimated cost for such project in the R&R Study, or (iii) is needed prior to the time for such project shown in the R&R Study, provided that each Party retains its remedies under Section 5.3.2; and

(iv) Approving the joint debt financing of any R&R Project, Expansion Project or capital project needed due to a Regulatory Change.

(b) Approval of Major Decisions. After the fifth anniversary of Treatment Substantial Completion, any action regarding a Major Decision requires the formal approval of both the County's Board of Supervisors and Lincoln's City Council. Prior to submitting actions on Major Decisions to the board or council, the Parties will brief the Oversight Committee on the proposed Major Decision at either a regular or special meeting of the Oversight Committee. Members the Oversight Committee may provide, jointly or separately, such recommendations and advice regarding Major Decisions as they deem appropriate to their respective board or council.

5.4.3 Joining Additional Participants. Should the City of Auburn or another public entity wish to participate in the MWPRS Project and both Parties approve the inclusion of the entity, then, in addition to any other separate agreements between a Party and the joining entity, the Parties will negotiate an amendment to this Agreement with the joining entity that provides for its rights and responsibilities during the Operations Period, including, without limitation: participation on the PCT and Oversight Committee; capacity allocation; funding R&R Projects, Expansion Projects, and capital projects required by Regulatory Change; sharing increased operations costs due to Regulatory Change or Regulatory Infraction; addressing its share of Reclaimed Water; and liability allocation.

5.5 Sale, Lease or Disposition of Regional Facilities. Lincoln will not abandon, substantially discontinue use of, sell, lease or otherwise dispose of the Regional Facilities, in whole or in part, without the written approval of the County and State Water Board. Lincoln will not enter any contract or arrangement or cause or permit any contract or arrangement to be entered (to the extent of its reasonable control) with persons or entities that are not state or local governmental units if that contract or arrangement would confer on such persons or entities any right to use the Regional Facilities on a basis different from the right of members of the general public. The contracts or arrangements contemplated by the preceding sentence include but are not limited to management contracts, take or pay contracts or put or pay contracts, and capacity guarantee contracts. Lincoln understands that County's SRF financing is conditioned on public ownership of the Regional Facilities. Lincoln accepts and agrees that its failure to satisfy the provisions of this section will subject the County to repayment obligations, penalties, or costs to the State Water Board, and Lincoln will promptly reimburse the County for any costs incurred by County under its SRF financing due to Lincoln's failure to comply with the obligations of this Section.

6. Liability Allocation

6.1 Lincoln Indemnity Provisions.

6.1.1 General Indemnity. To the fullest extent permitted by law, Lincoln will defend, indemnify and hold the Indemnitees harmless from any and all claims, losses, damages, liabilities and expenses (including reasonable legal, expert witness and consulting fees and costs) arising out of, or resulting from, the acts or omissions, in whole or in part (including breach of contract), of Lincoln, its design firms, contractors, consultants, suppliers and anyone for whom any of them may be liable, in connection with the Lincoln-County Project, the Regional Facilities or the Lincoln WWTRF. Notwithstanding the above, Lincoln will not be required to defend, indemnify and hold harmless an Indemnitee for that Indemnitee's own active negligence, sole negligence or willful misconduct, provided that Lincoln will continue to indemnify and defend that Indemnitee to the extent and in proportion to the degree that the Indemnitee is not actively negligent.

6.1.2 Indemnity for Liens. Lincoln will defend, indemnify, and hold the County and other Indemnitees harmless from any and all claims, stop payment notices, or associated legal proceedings (including reasonable legal, expert witness and consulting fees and costs) asserted against the County by any contractor, subcontractor, suppliers or other persons or entities claiming by or through Lincoln or its contractors by reason of having provided labor, services, materials, and equipment relating to the Lincoln-County Project or the Regional Facilities.

6.1.3 Indemnity for Prevailing Wage Claims. Lincoln will defend, indemnify, and hold the County and other Indemnitees harmless from any and all claims, losses, damages, liabilities and expenses (including reasonable legal, expert witness and consulting fees and costs) arising out of any allegation that Lincoln or any of its contractors or subcontractors failed to comply with prevailing wage legal requirements.

6.1.4 Indemnity for Developer Claims. Lincoln will defend, indemnify, and hold the County and other Indemnitees harmless from any and all claims, losses, damages, liabilities and expenses (including reasonable legal, expert witness and consulting fees and costs) arising out of or connected with any obligations that Lincoln allegedly has to third party property developers or to Lincoln's residents.

6.1.5 Duty to Defend. Lincoln will:

(a) at Lincoln's own cost, expense and risk, defend all claims and proceedings as required in Section 6.1 using counsel reasonably satisfactory to the County. If Lincoln fails to defend diligently any such claim or proceeding with counsel reasonably satisfactory to the County, the Indemnitees will have the right (but no obligation) to defend the same at Lincoln's expense;

(b) give the Indemnitees copies of documents served in any such claims or proceedings and, whenever requested by an Indemnitee, will advise promptly as to the status of such claims or proceedings;

(c) reimburse the Indemnitees for any and all legal expense incurred by any of them in connection with such claims or proceedings or in enforcing the indemnities granted in Section 6.1 (or an Indemnitee may elect to offset all or part of its legal expense against any amounts it owes to Lincoln); and

(d) not settle any such claims or proceedings without the prior written consent of the Indemnitees (unless the effect of such settlement will be to release every Indemnitee against whom liability has been asserted from all liability whatsoever with respect to such claim and proceeding, without cost or contribution from any Indemnitee).

(e) The duty to defend will apply, and Lincoln will be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of Lincoln or any Indemnitee, or as to whether an exception to provide a defense or indemnity may apply.

6.2 Indemnity by County. To the fullest extent permitted by law, County will defend, indemnify and hold Lincoln and its officers, directors, members, employees and affiliates harmless from any and all claims, losses, damages, liabilities and expenses (including reasonable legal, expert witness and consulting fees and costs) to the extent arising out of, or

resulting from, the active negligence or willful misconduct of County in connection with the Lincoln-County Project. Notwithstanding the above, County will not be required to defend, indemnify and hold harmless Lincoln or its officers, directors, members, employees and affiliates for the active negligence, sole negligence or willful misconduct of Lincoln or those for whom Lincoln is responsible, provided that County will continue to indemnify and defend Lincoln to the extent and in proportion to the degree that Lincoln and those for whom it is responsible are not actively negligent.

6.2.1 Duty to Defend. County will:

(a) at County's own cost, expense and risk, defend all claims and proceedings as required in Section 6.2 using counsel reasonably satisfactory to Lincoln. If County fails to defend diligently any such claim or proceeding with counsel reasonably satisfactory to Lincoln, then Lincoln will have the right (but no obligation) to defend the same at County's expense;

(b) give Lincoln copies of documents served in any such claims or proceedings and, whenever requested by Lincoln, will advise promptly as to the status of such claims or proceedings;

(c) reimburse Lincoln for any and all legal expense it incurs in connection with such claims or proceedings or in enforcing the indemnity granted in Section 6.2, provided that County may elect to offset all or part of Lincoln's legal expense against any amounts that Lincoln owes to County; and

(d) not settle any such claims or proceedings without the prior written consent of Lincoln (unless the effect of such settlement will be to release Lincoln from all liability whatsoever with respect to such claim and proceeding, without cost or contribution from Lincoln).

(e) The duty to defend will apply, and County will be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of County or Lincoln, or as to whether an exception to provide a defense or indemnity may apply.

6.3 Damages to the County for Project Delays.

6.3.1 Except as specifically provided in this Section 6.3, County waives all claims against Lincoln for damages due to delay in completion of the Lincoln-County Project. However, Lincoln will reimburse County within 30 days of written demand for the following costs arising from or connected with delays in completion of the Lincoln-County Project (other than delays for which County is responsible under Section 4.2.5(c)):

(a) Fines and penalties assessed by the State or Regional Water Quality Control Board or other regulatory agencies after the Treatment Completion Date due to noncompliance of County's wastewater collected at the SMD 1 WWTP Site with applicable regulatory standards until the date the Project actually achieves Treatment Substantial Completion;

(b) The interest accrued on County's SRF loan between the Project Final Completion Date and the date when Project Final Completion actually occurs;

(c) Additional costs incurred by County for its construction-related consultants and outside advisors between the Project Final Completion Date and the date when Project Final Completion actually occurs; and

(d) The difference between (1) the costs paid by County in continuing to operate the SMD 1 WWTP Site from the Treatment Completion Date (including the cost of County employees assigned to the SMD 1 WWTP Site) until the date when Treatment Substantial Completion actually occurs and (2) the Operations Charge County would have paid during that time period.

6.3.2 If County terminates the Agreement pursuant to Section 6.7 and the number of Accrued Delay Days are greater than ten, then the calculation of delay costs under Section 6.3.1 will be made as if the Project had achieved Project Final Completion or Treatment Substantial Completion, as applicable, on that date which occurs on the number of Accrued Delay Days after the Project Final Completion Date or Treatment Completion Date, as applicable. The "Accrued Delay Days" are the number of calendar days between the Treatment Completion Date (as adjusted under Section 4.2.5(c)) and the projected date of Treatment Substantial Completion determined as of the effective date of termination of this Agreement. If County terminates the Agreement pursuant to Section 6.7 and number of Accrued Delay Days is less than or equal to ten, then Lincoln will not be responsible for any delay costs under Section 6.3.1.*

6.3.3 If Lincoln fails to reimburse County as provided in Section 6.3, then, without limiting any other rights or remedies of County, County may credit the costs allowed under Section 6.3 as Capital Costs paid to Lincoln in reduction of the Oversizing Contingency or may offset all or a portion of those costs against any amounts due from County to Lincoln under this Agreement or applicable law.

6.3.4 Except to the extent that any active negligence of Lincoln causes the loss of the principal forgiveness under the SRF financing, County also waives any claims against Lincoln for any loss of the principal forgiveness under the SRF financing for failure to meet the SRF application deadline.

6.4 Damages to Lincoln for Project Delays. Except as specifically provided in this section, Lincoln waives all claims against the County for damages due to delays in completion of the Lincoln-County Project caused by the County or those for whom it is responsible. Lincoln's sole remedy for any Lincoln-County Project delays is the remedy of an adjustment to the Capital Charge and/or Project Completion Dates as provided by Section 4.2.5(c).

* The following example illustrates the determination of delay costs under Section 6.3.2. Assume that County terminates under Section 6.7 when the construction is 70% complete and at that time, the projected date of Treatment Substantial Completion is November 15, 2015. The Accrued Delay Days would be the number of calendar days between August 31, 2015 (the Treatment Completion Date) and November 15, 2015, for a total of 76 calendar days. For purposes of calculating delay costs, the date on which the Project is deemed to achieve Project Final Completion is June 15, 2016 (March 31, 2016 plus 76 calendar days), and the date on which it is deemed to achieve Treatment Substantial Completion is November 15, 2015. Lincoln would then be responsible for: (a) the RWQCB fines for noncompliance between September 1, 2015 and November 15, 2015; (b) SRF loan interest for the period of April 1, 2016 through June 15, 2016; (c) County's additional costs for its construction-related consultants and outside advisors for the period of April 1, 2016 through June 15, 2016; and (d) the differential in operating costs for SMD 1 versus Operations Charge for period of September 1, 2015 through November 15, 2015.

6.5 If Lincoln Defaults.

6.5.1 Except as specifically provided otherwise in this Agreement, before County may seek a remedy for a Material Default by Lincoln, County must provide written notice of the Material Default to Lincoln. The notice must describe the nature of the default and identify a period within which Lincoln must cure the Material Default, which period will be at least ten days after the notice of default and will be extended as reasonably necessary for the cure of the particular Material Default, so long as Lincoln commences and pursues the cure with reasonable diligence during the identified time period. County need not allow Lincoln an opportunity to cure if County has reasonable evidence that Lincoln committed fraud related to the Lincoln-County Project or Regional Facilities.

6.5.2 If Lincoln fails to cure a Material Default within the time frame allowed under Section 6.5.1, County may pursue any and all remedies allowed by law or equity arising out of the Material Default, and County will be excused from performing any further obligations to Lincoln under this Agreement other than in this Section 6.5.2. Without limiting any other rights or remedies of County, after Lincoln fails to cure a Material Default within the time frame allowed under Section 6.5.1 and after giving Lincoln prior written notice, County may:

(a) perform any obligations of Lincoln under this Agreement and, by an irrevocable license, take possession of the SMD 1 WWTP Site, the Lincoln WWTRF, the Regional Facilities, rights of way and other property interests acquired by Lincoln to connect the SMD 1 WWTP Site and the Lincoln WWTRF, and of all Lincoln's work-in-progress, materials, equipment, tools, and machinery used in constructing or operating the Lincoln-County Project or the Regional Facilities, with County's possession ending at such time as County reasonably determines that Lincoln is ready, willing and able to operate the Regional Facilities on the terms of this Agreement or such other terms agreed in writing by the Parties;

(b) exercise its rights under Sections 4.3.4(h), 4.3.5(v), 5.3.5(f) and/or 5.3.6(i) and take by assignment those of Lincoln's contracts with designers, CM, contractors or operators elected by County;

(c) complete the construction of the Lincoln-County Project components necessary to treat the County's wastewater from the SMD 1 WWTP Site and/or operate the Regional Facilities by whatever reasonable methods County may deem expedient for the period allowed under Section 6.5.2(a) above;

(d) charge County's costs incurred per Section 6.5.2 (including any costs paid by County to a contractor or surety to cure any default by Lincoln under its construction contracts) amounts to Lincoln as follows:

(i) First, as an offset against any amounts due from County to Lincoln under this Agreement or applicable law.

(ii) Next, any remaining amount of County's costs for completing the construction of the Lincoln-County Project components necessary to treat the County's wastewater from the SMD 1 WWTP Site will be treated as Capital Costs paid to Lincoln until the aggregate of all Capital Costs paid by County reaches the Capital Charge, after which Lincoln must reimburse the remainder of County's costs for completing the construction of the Lincoln-County Project components necessary to treat the County's wastewater from the SMD 1 WWTP Site.

(iii) In addition, Lincoln must reimburse all costs incurred by County for operating the Regional Facilities that exceed the County's Operations Charge.

(iv) County will notify Lincoln of the costs to be charged to Lincoln under this Section 6.5.2, including reasonable back-up documentation of such costs. County will also provide all documentation reasonably requested by Lincoln to evidence such costs, and Lincoln has the right, upon advance notice and during normal business hours, to inspect and copy the relevant records of County relating to those costs. Lincoln will pay the amounts due from it to the County within 30 days of County's notice under this paragraph. Past due amounts will bear interest.

6.5.3 County and Lincoln agree that the obligations of Lincoln are unique and that a failure of Lincoln to meet its obligations under this Agreement would result in County being unable to supply waste water treatment in compliance with regulatory requirements, thereby harming the public welfare. Thus, both Lincoln and County agree that an action for monetary damages by County due a Material Default by Lincoln would be an inadequate remedy by itself. Without limiting any other rights or remedies of County, if Lincoln fails to cure a Material Default within the time frame allowed under Section 6.5.1, Lincoln agrees that County may bring an action for specific performance of this Agreement by Lincoln, and Lincoln waives any defenses it may have to the availability of specific performance as a remedy for County without waiving (1) Lincoln's right to contest whether Lincoln is in breach of a contractual obligation or (2) County's obligation under Civil Code Section 3386 (or any successor statutory provision) to assure County's performance of this Agreement.

(a) Lincoln and County agree that the terms of this Agreement are sufficiently definite for a court to enforce its material provisions under a remedy of specific performance and that the court's enforcement of a specific performance remedy would be practically feasible.

(b) If and to the extent necessary for a court to mandate specific performance, the Parties agree that the court may sever any non-essential provision of this Agreement and provide an alternative remedy for such non-essential provision.

6.5.4 County may offset all of its costs, losses and damages arising out of or related to a Material Default by Lincoln against any amounts due from County to Lincoln under this Agreement or applicable law.

6.6 If County Defaults. Inasmuch as the primary obligations of the County under this Agreement are the payment of various monetary sums and that the services to be provided by Lincoln are critical to the public welfare, Lincoln agrees that its only remedy for a Material Default by the County is a claim for monetary damages to the extent allowed under this Agreement. In no event may Lincoln suspend, slow down or cease to fulfill its obligations under this Agreement to construct and operate the Lincoln-County Project and Regional Facilities without the written consent of the County. Except as specifically provided otherwise in this Agreement, before Lincoln may seek a remedy for a Material Default by the County, Lincoln must provide written notice of the Material Default to the County. The notice must describe the nature of the Material Default and identify a reasonable period within which County must cure the Material Default, which period will be at least ten days after the notice of default and will be extended as reasonably necessary for the cure of the particular Material Default, so long as the County commences and pursues the cure with reasonable diligence during the identified time period. Lincoln need not allow the County an opportunity to cure if Lincoln has reasonable

evidence that the County has committed fraud related to the Lincoln-County Project or Regional Facilities. If the County fails to cure the Material Default within that time period, then Lincoln may proceed under Article 7. Lincoln may offset all of its costs, losses and damages arising out of or related to a Material Default by the County against any amounts due from Lincoln to the County under this Agreement or applicable law.

6.7 County's Right to Terminate. Without limiting any other rights or remedies of County, if County determines that the Lincoln-County Project is impracticable to complete or that County's participation in the Lincoln-County Project or Regional Facilities is no longer in the best interests of the County, as determined by the Board of Supervisors, then County may terminate this Agreement effective 15 days after written notice of termination to Lincoln. After such a termination made prior to the Operations Period, subject to an offset for damages sustained by County arising from any Material Default(s) by Lincoln, County must promptly pay or reimburse Lincoln for all undisputed Capital Costs owed by County under this Agreement that are incurred by or on behalf of Lincoln through the effective date of termination (plus a reasonable period of time thereafter for Lincoln to terminate its design and construction contracts, cancel orders of materials and equipment, dispose of unneeded materials and equipment already delivered, and restore any excavation or disturbed conditions) and not yet paid or offset pursuant to this Agreement. After such a termination made during the Operations Period, subject to an offset for damages sustained by County arising from any Material Default(s) by Lincoln, County must promptly pay Lincoln for all Operations Phase payments owed by County under this Agreement that are due from County through the effective date of termination and not yet paid or offset pursuant to this Agreement. Payment under this Section 6.7 will be Lincoln's sole remedy for a termination under this section. Disputes over amounts due under this Agreement will be resolved per Article 7.

6.8 Breach Affecting Tax-Exempt Status or Federal Compliance. If any breach of the provisions of this Agreement by Lincoln results in the loss of tax exempt status for any bonds of the State or any subdivision or agency thereof, including bonds issued on behalf of the State Water Board, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government by reason of any arbitrage profits, Lincoln must immediately pay on behalf of the County or reimburse the County for costs of the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

If any breach of the provisions of this Agreement by Lincoln results in the failure of SRF funds to be used pursuant to the provisions of the County's financing agreement with the State Water Board, or if such breach results in an obligation on the part of the State or any subdivision or agency thereof to reimburse the federal government, Lincoln must immediately pay on behalf of the County or reimburse the County for costs of the State or any subdivision or agency thereof in an amount equal to any damages paid by or loss incurred by the State or any subdivision or agency thereof due to such breach.

Any breach of the financing agreement with the State Water Board on the part of the County does not relieve the County of its obligations to pay Lincoln under this Agreement, nor impose any obligation on Lincoln to reimburse the County or State for any damages paid by or loss incurred by the State of any subdivision or agency thereof due to such breach, provided that the County's breach of the State Water Board financing agreement is not due to any act, omission or breach of Lincoln or its contractors.

Any dispute as to whether Lincoln has breached a provision of this Agreement will be resolved per Article 7.

7. Dispute Resolution

7.1 General. "Disputes" are disputes, claims, or other matters in question between the Parties arising out of or connected to the Lincoln-County Project, the Regional Facilities or this Agreement, including breach of contract. Without limiting the Parties' rights under Article 6, Disputes will be resolved as provided in this Article 7.

7.2 Expedited Procedure.

7.2.1 Applicability. Notwithstanding Sections 7.3 through 7.6 below, the expedited dispute resolution process in this Section 7.2 will apply when the Dispute occurs before Treatment Substantial Completion and meets any one or more of the following categories:

(a) the aggregate cost impact of the Dispute on a Party (including any impact on a Party's future operations costs) is less than \$100,000. Those matters that are likely to repeat over the course of the Lincoln-County Project will have their cost impact estimated based on the aggregate cost of their future occurrences;

(b) the Dispute involves a matter that would delay Treatment Substantial Completion if not determined on an expedited basis; or

(c) a payment Dispute under Section 4.2.1(c).

However, notwithstanding the above, the expedited dispute resolution process in this Section 7.2 will not apply when the Dispute involves a matter affecting the compliance of the Lincoln-County Project with applicable laws and regulations or affecting the safety of the public or workers.

7.2.2 Project Neutral. The Parties have jointly selected the Project Neutral and an alternate, as designated in Section 1.1.40. If the Project Neutral or the alternate Project Neutral resigns or is unable to serve, the Parties will jointly designate a successor Project Neutral or alternate Project Neutral. If the Parties are unable to agree on a successor within five days after written notice from one to the other specifying this section, either Party may request the American Arbitration Association (AAA) to appoint a person from its National Roster of Neutrals experienced in construction disputes to act as the Project Neutral or alternate Project Neutral. However, AAA rules for arbitration will not apply.

7.2.3 Informal Resolution. Prior to invoking the expedited procedures of this Section 7.2, the Authorized Representatives of the Parties will use good faith, expedited efforts to resolve the matter.

7.2.4 Notice. If a Party gives written notice to the other Party and the Project Neutral invoking the expedited procedures of this Section 7.2, the Parties and Project Neutral will schedule a joint meeting to occur within three business days of the request (unless both Parties agree to a later meeting). If the Project Neutral is not available in that time period, the notifying Party will send its notice to the alternate Project Neutral designated in Section 1.1.40 and the Parties will schedule the joint meeting with that alternate within three business days. To

be effective, the notice must specify in reasonable detail the following items, and a failure to address them is grounds for the responding Party to delay the joint meeting with the Project Neutral until after a compliant notice is received:

- (a) the nature of the Dispute and prior efforts to resolve it;
- (b) which category of Section 7.2.1 applies to the Dispute; and
- (c) the initiating Party's proposal for resolving the Dispute.

7.2.5 Response. The Party receiving a notice under Section 7.2.4 must provide the Project Neutral and initiating Party with a written response no later than the end of the business day prior to the scheduled joint meeting. The response will indicate the responding Party's position on the Dispute and specify its own proposal for resolving the Dispute, and may also challenge whether the requirements of Section 7.2.1 have been met. Failure by the non-initiating Party to submit a response complying with this Section 7.2.5 will not delay the joint meeting, but will be taken into consideration by the Project Neutral in making its decision.

7.2.6 Meeting with Project Neutral. The joint meeting of the Parties and Project Neutral will last no more than 4 hours unless both Parties agree to extend the time or adjourn the meeting to another day. Using such meeting procedures determined by the Project Neutral, each Party will present its position and requested determination to the Project Neutral. If the responding Party has challenged whether the Dispute meets the requirements of Section 7.2.1, the first item to be determined by the Project Neutral is whether the Dispute is subject to the expedited process of this Section 7.2. The Project Neutral must make that determination during the joint meeting and document it to the Parties promptly thereafter. If the Project Neutral determines that the Dispute is not subject to the expedited process of this Section 7.2, then the Parties will schedule a meeting of the Authorized Representatives within seven days and proceed with the standard dispute resolution process under Sections 7.3 through 7.6 without the need for the initial notice.

7.2.7 Project Neutral's Decision(s). The Project Neutral will have no authority to decide any Disputes other than Disputes meeting the requirements of Section 7.2.1. In considering or rendering any decision, the Project Neutral must construe, interpret, and apply this Agreement strictly in accordance with its terms. Provided the Dispute is not successfully challenged before the Project Neutral on the basis of not meeting the requirements of Section 7.2.1, the Project Neutral must deliver a written decision on the Dispute, including a statement of the Project Neutral's reasons supporting the decision, to the Parties no later than the end of the business day following the joint meeting. During the course of the Lincoln-County Project until and including Project Final Completion (or, if earlier, the termination of this Agreement), the Project Neutral's decision is binding and both Parties must comply promptly with Project Neutral's decision, unless: (a) a court of competent jurisdiction has determined that the Project Neutral has acted beyond his or her authority, or (b) both Parties jointly agree in writing at any time to amend the Project Neutral's decision. However, following Project Final Completion (or, if earlier, the termination of this Agreement), any and all decisions of the Project Neutral are no longer conclusive or binding—i.e., the Parties may assert their rights as to such issues as if the Project Neutral never decided them. If a Party wishes to assert its rights regarding a Dispute decided by the Project Neutral, then following Project Final Completion it must follow the dispute resolution procedure in Sections 7.3 through 7.6.

7.2.8 Shared Costs. The Parties will share equally the fees and costs of the Project Neutral for resolving any Dispute under this Section 7.2.

7.3 Notice and Informal Resolution. The dispute resolution procedures of Sections 7.3 through 7.6 will apply if the expedited process in Section 7.2 has not been invoked under its applicable terms, or, if Section 7.2 provides for the following procedures to apply. In such case, any Party may initiate these dispute resolution procedures by providing the other Party with written notice of a potential Dispute which specifies in reasonable detail the basis of the Dispute, the remedy sought and requesting a meeting of the Authorized Representatives to resolve. The Authorized Representatives of the Parties will then meet within seven days of receipt of a notice of potential Dispute and make good faith efforts to resolve it. Under no circumstances will a claim be made if it is barred by applicable statutes of limitation or repose.

7.4 Senior Executive Meeting. If the Authorized Representatives are unable to resolve the Dispute, any Party may request a meeting of the Senior Executives for purpose of resolving the Dispute. The Senior Executives will review the Dispute in detail and then meet face-to-face to discuss and use good faith efforts to resolve the matter ("Senior Executive Meeting"). The Senior Executive Meeting will occur no later than 14 days after the request made by a Party for the meeting, unless the Parties agree upon a longer period of time. The Senior Executive Meeting will be for the express purposes of: (a) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in the Dispute; (b) freely and candidly discussing each Party's position; and (c) reaching agreement upon a reasonable resolution of the Dispute.

7.5 Independent Expert.

7.5.1 If the Dispute primarily involves engineering or other technical matters and is not resolved within seven days after the Senior Executive Meeting, then the Parties may agree to have the Dispute reviewed by an independent, third-party expert in the subject matter of the Dispute ("Independent Expert") who will recommend a realistic solution in the best interest of the members of the public affected by the Lincoln-County Project or Regional Facilities. The Independent Expert must be approved by both Parties and must not have any past (within the preceding five years) or present business or financial relationship with either Party or any other entity financially interested in the subject of the dispute, other than having previously served as an Independent Expert.

7.5.2 Once appointed, the Independent Expert will review any prior technical analyses or recommendations, review material submitted by the Parties and, as the Independent Expert deems appropriate, meet with the Parties and other persons having information relevant to the issues in dispute before rendering a recommendation as to an appropriate resolution of the Dispute. Within 21 days after appointment, the Independent Expert will deliver a written recommendation to the Parties regarding the Dispute. If any Party objects to the expert recommendation, it may request an opportunity to submit additional information to Independent Expert for consideration. The additional information will be shared with the other Parties who will also be afforded the opportunity to provide additional information, and the Independent Expert may update its recommendation as it sees fit. The Parties may use the expert recommendation as they see fit in resolving the Dispute, but the recommendation is not binding.

7.5.3 The Parties will equally share the fees and costs of the Independent Expert. The recommendation of the Independent Expert will be admissible in evidence in any

subsequent dispute resolution proceeding only to the extent so ordered by a court pursuant to the California Evidence Code or Federal Rules of Evidence, as applicable.

7.6 Mediation.

7.6.1 If the Dispute is not resolved under the provisions of Sections 7.3 through 7.5, then prior to any litigation of the Dispute commenced by either or both Parties, the Parties must jointly attempt to resolve the Dispute through mediation with a mutually acceptable mediator. If the Parties are unable to agree on a mediator within ten days of the request for mediation, then the Party requesting the mediation will request the American Arbitration Association to appoint a mediator from its Panel of Mediators experienced in construction disputes.

7.6.2 After appointment, the mediator may inspect the Lincoln-County Project site, the Regional Facilities site, documents pertaining to the Lincoln-County Project or Regional Facilities, and other information reasonably required to understand the factual and legal basis of the Dispute. With the approval of the Parties, the mediator may engage an expert consultant to provide independent analysis to the mediator on technical matters, which analysis the mediator may share with the Parties in mediator's discretion. The Parties and mediator will schedule a mediation session at a mutually acceptable time. Representatives from each Party who have authority to resolve the Dispute will attend the mediation. The mediator will have no authority to make binding decisions; any resolution of the Dispute during mediation requires the written agreement of both Parties. The Parties will bear the cost of mediation equally.

7.7 Continuation of Work. Each Party must continue to perform its obligations under this Agreement, including diligently prosecuting the construction work and making all undisputed payments, regardless of the existence of a Dispute or the pendency of dispute resolution proceedings between or among the Parties, whether under Section 7.2 or the remainder of this Article 7.

8. Miscellaneous

8.1 No Constraint on County's Standard Regulatory Role. Without limiting Section 4.3.2, nothing in this Agreement will prevent or constrain County from exercising its standard regulatory functions on any aspects of the Lincoln-County Project or Regional Facilities that would otherwise be under County jurisdiction if County were not a party to this Agreement, including without limitation evaluating and granting permits, inspecting work, and collecting applicable fees and taxes, nor will County's exercise of such standard regulatory functions give rise to any claim under this Agreement by Lincoln.

8.2 Good Faith Cooperation. The County and Lincoln will act in good faith and cooperate with each other in completing the Lincoln-County Project and operating the Regional Facilities to meet the requirements of this Agreement. The Parties will provide the necessary services of their Authorized Representatives to perform their duties under this Agreement and provide any necessary institutional support to meet its obligations under this Agreement.

8.3 License of County's Real Property Interests. County will continue to own the SMD 1 WWTP Site as well as all real property County already owns and through which certain segments of the Lincoln-County Project's pipelines will be installed (the "County Property"). The County Property also includes the temporary laydown area shown in Exhibit 14. County will provide property insurance covering the SMD 1 WWTP Site. County grants Lincoln a license

from the effective date of this Agreement through the end of the Operations Period to access, perform work on, improve, alter, and otherwise use the County Property, through Lincoln staff, Lincoln contractors and/or Lincoln agents, solely for purposes of carrying out the Lincoln-County Project and operating the Regional Facilities. So long as there is not an uncured Material Default by Lincoln, the license granted in this section is irrevocable through the term of the Operations Period, provided that the license for use of the temporary laydown area only lasts through Project Final Completion. Lincoln may not sublease or sublicense any part of the County Property and any purported sublease or sublicense will be void. There is no additional charge to Lincoln for this license beyond the consideration supporting the mutual obligations of the County and Lincoln under this Agreement.

8.4 Restrictions on Pipeline Connections. No user connections will be allowed to the force main pipeline between the end point of that pipeline nearest to the County and the point where the force main pipeline connects to the energy dissipation structure at Sierra College Boulevard. Any user connections to the gravity main pipeline outside the municipal boundaries of Lincoln and west of Sierra College Boulevard require the written approval of Lincoln and the County, not to be unreasonably withheld or delayed.

8.5 Responsibility for Contractors. Lincoln will be responsible for all persons or entities engaged in work performed pursuant to this Agreement, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. Lincoln be responsible for any and all disputes arising out of its third party contracts for work on the Lincoln-County Project.

8.6 Required Notices. Lincoln will notify the County and the State Water Board within three days of the occurrence of any of the following:

8.6.1 Any litigation pending or threatened against Lincoln regarding the Lincoln-County Project, Regional Facilities, Lincoln's wastewater capacity or its continued operation of the Lincoln WWTRF or Regional Facilities;

8.6.2 adverse water quality findings by the Regional Water Quality Control Board;

8.6.3 Change of ownership of the Lincoln-County Project or Regional Facilities, or change of management or service contract for operation of the Lincoln WWTRF or the Regional Facilities; or

8.6.4 Cessation of all major construction work on the Lincoln-County Project where such cessation of work is expected to or does extend for a period of 30 days or more;

8.6.5 Any circumstance, combination of circumstances, or condition, which is expected to or does delay Project Final Completion beyond the Project Final Completion Date, with follow-up information per Section 4.3.16;

8.6.6 Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Lincoln-County Project, Lincoln agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the State Water Board has determined what actions should be taken to protect and preserve the resource. Lincoln agrees to implement appropriate actions as directed by the State Water Board;

8.6.7 Discovery of any unexpected endangered or threatened species, as defined in the federal Endangered Species Act. This notification is in addition to Lincoln's obligations under the federal Endangered Species Act;

8.6.8 Any monitoring, demonstration, or other implementation activities such that the County, State Water Board and/or Regional Water Quality Control Board staff may observe and document such activities; or

8.6.9 Any public or media event publicizing the accomplishments and/or results of this Lincoln-County Project and provide the opportunity for attendance and participation by state and federal representatives with at least ten working days' notice to both the State Water Board and USEPA Region IX. As of the date of this Agreement, the contacts for USEPA Region IX are Juanita Licata at Licata.juanita@epa.gov (415) 972-3450 and Josh Amaris at Amaris.josh@epa.gov (415) 972-3597.

8.7 Rights in Data. Lincoln agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement, whether produced by Lincoln or its design firms or contractors, are subject to the rights of the County and State of California as set forth in this section. The County and State both have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the author may copyright the same, except that, as to any work which is copyrighted by the author, the County and State each reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so, and to receive electronic copies from Lincoln or the author upon request.

8.8 Records and Accounts. Each Party must keep proper books of record and accounts of the activities, finances, deliverables and obligations for the Lincoln-County Project and the Regional Facilities. Accounting records must make complete and correct entries of all transactions relating to the Lincoln-County Project and the Regional Facilities.

8.9 Compliance with Laws and Regulations. Lincoln agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limiting the foregoing, Lincoln agrees that, to the extent applicable, Lincoln will:

8.9.1 Comply with the provisions of the adopted environmental mitigation plan for the Lincoln-County Project;

8.9.2 Comply with the State Water Board's "Policy for Implementing the Clean Water State Revolving Fund," as amended from time to time;

8.9.3 Comply with and require its contractors and subcontractors to comply with the list of federal laws in Exhibit 16 or any other federal laws as required by the State Water Board; and

8.9.4 Comply with the following non-discrimination provisions:

(a) During the performance of this Agreement, Lincoln and its contractors and subcontractors will not unlawfully discriminate, harass, or allow harassment

against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.

(b) Lincoln, its contractors, and subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

(c) Lincoln, its contractors, and subcontractors will comply with the provisions of the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. (Gov. Code, §12990, subs. (a)-(f) et seq.; Cal. Code Regs., tit. 2, § 7285 et seq.) Such regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(d) Lincoln, its contractors, and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

(e) Lincoln will include the nondiscrimination and compliance provisions of this clause in all contracts to perform work under the Agreement.

8.10 Disclosure of Financial Information, Operating Data, and Other Information.

Lincoln agrees to furnish such financial, operating and other data pertaining to the Lincoln-County Project as may be requested by the County or the State Water Board to: (i) enable the State Water Board to cause the issuance of bonds and provide for security therefor; or (ii) enable any underwriter of bonds issued for the benefit of the State Water Board to comply with Rule 15c2-12(b)(5) of the Securities and Exchange Commission.

8.11 SRF Litigation. Under no circumstances may Lincoln use funds from any disbursement under this Agreement to pay costs associated with any litigation Lincoln pursues against the State Water Board or any Regional Water Quality Control Board.

8.12 Periodic Review of Insurance. The Parties recognize that, over a long term, insurance limits and requirements may need to change. Accordingly, after the commencement of the Operations Period, the Parties will periodically (no less than every five years) review the insurance requirements in Exhibit 7 and negotiate in good faith any requested amendments to the requirements in Exhibit 7.

8.13 Disposition of Property upon Termination. Upon any termination of the Agreement allowed hereunder, all improvements at the SMD 1 WWTP Site and the Lincoln-County Project pipeline outside Lincoln's city boundaries will belong to the County, and all Regional Facilities within Lincoln's city boundaries will belong to Lincoln.

8.14 Interest. Unless otherwise provided in this Agreement, any amounts due and unpaid will bear interest at an annual rate equal to the "prime rate" for commercial lending plus 1%. Should the County seek reimbursement under this Agreement for any interest to which it may expressly claim reimbursement from Lincoln as damages (e.g., interest accrued on the SRF loan, as provided in Section 6.3.1(b)), the interest rate shall be the actual interest rate incurred by the County.

8.15 Survival. The following provisions will survive the termination or expiration of this Agreement: Sections 4.2.1(c), 4.2.4(a), 4.3.4 through 4.3.7, 5.3.2(c) through 5.3.2(e), 5.3.5, 5.3.6, 5.3.14(e), 5.3.15(c), 5.3.15(d), 5.3.17(e), and Articles 6, 7, and 8, and Sections 2.4, 3.4 and 4 of Exhibit 6A.

8.16 Confidentiality. A Party must not disclose, or permit anyone for whom it is responsible to disclose, any Confidential Information to any third person except as required by applicable law, court order or as the Confiding Party may otherwise authorize in writing. If the Confiding Party authorizes disclosure to a third party that is not required by law, the disclosing Party must, prior to disclosure, enter into a confidentiality agreement with such third party containing provisions at least as strict with respect to use and disclosure of Confidential Information as set forth in this Section 8.16. Each Party will take all reasonable precautions to safeguard the Confidential Information of the other Parties. Upon request of the Confiding Party, the other Party must either return all documents with Confidential Information or certify that all copies of such documents have been appropriately destroyed.

8.17 Notice. Any notices to Parties required by this Agreement must either be delivered in person or mailed, U.S. first class, postage prepaid, addressed as follows:

If to County:

County of Placer
Department of Facilities Services
Attention: Bill Zimmerman, Deputy Director
11476 "C" Avenue
Auburn, CA 95603

With a copy to:
Placer County Counsel
175 Fulweiler Avenue
Auburn, CA 95603

If to Lincoln:

City of Lincoln
Attention: Mark Miller, Director of Public Services
600 6th Street
Lincoln, CA 95648

With a copy to:
Jonathan Hobbs
City Attorney, City of Lincoln
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

8.17.1 Notices under this Agreement will be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Party may amend its address for notice by notifying the other Parties as required above.

8.18 Further Assurances. Each Party will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the purposes and intent of this Agreement.

8.19 Amendment. This Agreement may be amended only by the written agreement of the Parties; no representative of any Party has authority to amend this Agreement orally.

8.20 Jurisdiction and Venue. This Agreement will be governed by the laws of the State of California. The Parties agree that exclusive venue for any legal proceeding brought under this Agreement will be in the County of Placer, State of California.

8.21 Assignment. Each Party respectively binds itself and its successors, assigns, and legal representatives to the other Party to this Agreement. A Party may not assign this Agreement without the written consent of the other Party and any unconsented assignment will be void.

8.22 Interpretation. The terms and conditions of this Agreement will be interpreted according to their plain meaning, and not strictly for or against any Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable, the term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

8.23 Waiver. Except as otherwise specifically provided in this Agreement, any waiver of a Party's rights or obligations under this Agreement must be made in a writing signed by the waiving party. No Party's action or failure to act will not constitute approval of or acquiescence in a breach of this Agreement unless specifically agreed to in writing by the Parties.

8.24 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Agreement showing the true signatures of the Parties may be used for all purposes as originals.

8.25 Section Headings. The section headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning of interpretation of this Agreement.

8.26 Entire Agreement. This Agreement (and, to the extent incorporated herein, the DERA) constitute the entire integrated agreement between the Parties and supersedes all prior oral and written negotiations, representations, or agreements by the Parties with respect to this subject matter.

[Signature Page Follows this Page]

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: _____
Chair, Board of Supervisors

APPROVED AS TO FORM:

BY: _____
County Counsel

ATTEST:

BY: _____
Clerk, Board of Supervisors

CITY OF LINCOLN

BY: _____
City Manager

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney