

April 26, 2021



Honorable Members of the  
Mendocino Local Agency Formation Commission

Uma Hinman, Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
Sent via email: [eo@mendolafco.org](mailto:eo@mendolafco.org)

Re: City of Ukiah Application to Detach the Ukiah Valley Sanitation District – Remaining Issues

Dear Mr. Chair, Members of the Commission, Ms. Hinman, and LAFCo Staff,

We hope this finds you well. Thank you for the opportunity to appeal LAFCo staff's decision that Mendocino LAFCo ("LAFCo") cannot accept the City's application to detach the Ukiah Valley Sanitation District (the "Detachment Application") for filing. As the City has been working on its Detachment Application for a number of years, we appreciate the chance an open discussion of our issues presents and believe it will provide much needed clarity and resolution. Furthermore, we recognize the history of the City and the Sanitation District has perhaps clouded issues that, at least in the City's opinion, seem quite clear. Our hope in engaging in this forum is to set aside ancillary issues which are properly the subject of a hearing on the Detachment Application and to focus on the issues before us which are currently preventing that larger discussion from occurring. We therefore sincerely appreciate LAFCo staff's offer for this appeal and your time in considering its merits, believing it is a much-welcomed step toward a clear vision for the future of Ukiah Valley.

This letter will specifically address three issues LAFCo staff have raised for your consideration, but before turning to those it may be helpful to provide a brief summary of the Detachment Application. The City initially adopted a Resolution of Application in an open and properly noticed meeting of the City Council on November 5, 2014.<sup>1</sup> On November 20, 2014, the City provided to LAFCo a Justification of Proposal form in support of the Detachment Application, along with several pieces of information and supporting documents.<sup>2</sup> On April 29, 2020, the City submitted an amended proposal along with an attached Plan for Services.<sup>3</sup> In its Plan for Services, the City, to address concerns raised by LAFCo staff and the Sanitation District, presented various documents, including the Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah<sup>4</sup>, a map of the Collection System Facilities<sup>5</sup>, the City – District 2020 Refinancing Agreement<sup>6</sup>, the Joint Sewer Rate Study Draft Findings and Recommendations presentation<sup>7</sup>, and the City of Ukiah & Ukiah Valley Sanitation District 2020 Joint Sewer

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<sup>1</sup> See Exhibit A.

<sup>2</sup> See Exhibit B.

<sup>3</sup> See Exhibits C, C1, and D.

<sup>4</sup> See Exhibit D-1.

<sup>5</sup> See Exhibit D-2.

<sup>6</sup> See Exhibit D-3.

<sup>7</sup> See Exhibit D-4.

Rate Study Final Report<sup>8</sup>. These documents were provided, among other reasons, in an attempt to address issues that may be raised at the hearing regarding, among other things, the financial viability of the Sanitation District following detachment and the fact that the City and the Sanitation District had already contemplated detachment.

On May 29, 2020, Ms. Hinman sent the City a letter informing us that it could not accept the City's Detachment Application for filing, pointing to "changes [that] have occurred in application forms, local policies, and state laws governing change of organization applications."<sup>9</sup> Not having been provided with an explanation of any changes that would warrant refusal to file our Detachment Application, the City asked for the bases of LAFCo's refusal. On June 29, 2020, the City received an email listing six issues to support LAFCo's refusal based on the Detachment Application.<sup>10</sup> In that same June 29<sup>th</sup> email, LAFCo staff indicated that the Plan for Services the City submitted required revision and questioned whether the City's Detachment Application is exempt from compliance with the California Environmental Quality Act<sup>11</sup> – both these two latter concerns appeared to stem from a June 18, 2020, letter from the Sanitation District.

On July 9, 2020, in a letter from Ms. Andrea Matarazzo, the City's Special CEQA Counsel, the City responded to the CEQA issues.<sup>12</sup> Believing, apparently in error, that LAFCo's issues with CEQA had been resolved, the City moved on to the other requests. On August 21, 2020, the City responded to the issues raised in the June 29<sup>th</sup> email related to the Detachment Application and the Plan for Services.<sup>13</sup> Specifically regarding the request to revise the Plan for Services, the City made clear that "[g]iven the complete lack of evidence to support the Sanitation District's assertions, it is impossible for the City to understand whether, let alone how, it is to go about reconsidering its submitted Plan for Services, or what revisions are 'appropriate'."<sup>14</sup> To date, no support has been provided to the City for the assertions initially offered in June 2020.

In addition, and despite LAFCo's apparent refusal of the Detachment Application, LAFCo staff requested several specific documents in support of the City's Detachment Application, which the City, through a series of communications, has provided to LAFCo – with the sole exception of LAFCo's request for a new Resolution of Application.<sup>15</sup> Which brings us the issues currently before the Commission.

### Issues Under Consideration

We understand there are three issues before you for your consideration. Those issues are:

1. Whether the City needs to provide a certified copy of a new City Council Resolution of Application.
2. The status of the Detachment's exemption from CEQA and LAFCo's role as a responsible agency.

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<sup>8</sup> See Exhibit D-5.

<sup>9</sup> See Letter from Ms. Uma Hinman to Mr. Sage Sangiacomo. Attached as Exhibit E.

<sup>10</sup> See June 29, 2020, email from Ms. Uma Hinman to Mr. Philip Williams, Special Counsel for Ukiah. Attached as Exhibit F.

<sup>11</sup> See *Id.*

<sup>12</sup> See July 8, 2020, letter from Ms. Andrea Matarazzo, Special CEQA Counsel, addressed to LAFCo Commissioners and Ms. Hinman, sent in response to the Sanitation District lawyer's June 18, 2020, letter. Attached as Exhibit G.

<sup>13</sup> See August 21, 2020, letter from Mr. Williams to Ms. Hinman. Attached as Exhibit Hh.

<sup>14</sup> See Exhibit Hh, page 4.

<sup>15</sup> See August 21, 2020, email from Mr. Williams to Ms. Hinman. Attached as Exhibit H.

3. Whether LAFCo may take action on the proposed Detachment before both the City 's Sphere of Influence and UVSD's Sphere of Influence have been updated.<sup>16</sup>

Each of these issues is discussed in turn below and in the accompanying documents and exhibits.

1. The City does not need to adopt a new Resolution of Application because there is no such requirement anywhere in the law and such a position is antithetical to fundamental principles of American government.

LAFCo staff's request for a new Resolution of Application is an enduring position, and one which the City continues to dispute.<sup>17</sup> In the City's August 21, 2020, communication, attached as Exhibits A and Aa, the City specifically requested LAFCo staff to provide it with any bases for its position. To date LAFCo staff have provided none. Having been unable to find any legal support for LAFCo staff's position ourselves, we are forced to conclude there is none.

The City strongly disagrees that it needs to provide LAFCo with a new City Council Resolution of Application. LAFCo staff based this position on the fact that newly elected Councilmembers had been elected to the City Council since the City adopted its Resolution of Application, and therefore a new Resolution of Application was required.<sup>18</sup> This position is not supported by the law nor does it comport with republican principles of government – indeed, the position would practically paralyze representative government: imagine the Commission had to ratify or validate prior Commission actions every time a new Commissioner was appointed or that every new Congress had to re-adopt the Fifth Amendment guaranteeing due process of law! As we have communicated before, the City continues to strongly dispute this position and has no intent to adopt a new Resolution of Application.

2. The Proposed Detachment is statutorily exempt from CEQA, the record is clear that the City made such a determination at the time it adopted the Resolution of Application, there are no exceptions that apply to the applicable statutory exemptions, and LAFCo's options at this point for disagreeing with that determination are likely limited to LAFCo assuming lead agency status and performing its own CEQA analyses at its own expense.

When the City adopted its Resolution of Application, it concluded on the basis of substantial evidence that the proposed detachment results in no change in the existing physical environment and is exempt from CEQA.<sup>19</sup> No possibility exists that the detachment could result in a significant impact on the environment because it would not disturb, disrupt, change, or affect the existing physical environment in any way.<sup>20</sup>

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<sup>16</sup> Though not specifically addressed here, this issue also relates to the more general question of whether LAFCo needs an Updated SOI before it can proceed with any of the City's proposed changes in organization, as LAFCo staff have indicated.

<sup>17</sup> See Exhibits H and Hh.

<sup>18</sup> See Exhibit F.

<sup>19</sup> CEQA Guidelines, §§ 15261 (ongoing projects); 15301 (existing facilities); 15320 (changes in organization of local agencies where no change is made to the geographic area in which previously existing powers are exercised); 15061(b)(3) (CEQA applies only to projects with the potential to cause a significant effect on the environment).

<sup>20</sup> *North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal.App.4th 832, 872-873, 875; *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549, 558-559, 565-566.

The City has clearly complied with CEQA, though it has had to go to great length and expense in explaining the law to LAFCo staff and general counsel.<sup>21</sup> As we have had to repeat *ad nauseam* for over nine months, the City has complied with CEQA.

Despite these repeated efforts, on a recent call with LAFCo staff,<sup>22</sup> LAFCo's General Counsel expressed unsupported concerns about transparency. As we have said repeatedly and which the facts of the documents in front of you make clear, the City adopted its Resolution of Application in an open and properly noticed meeting; included in that Resolution's agenda item was clear reference to applicable CEQA exemptions into which this activity clearly falls.<sup>23</sup> In response to LAFCo's surprising and disappointing attempt to analogize the City's detachment application and applicable exemptions to the facts in *San Joaquin Raptor* (the facts and holdings of which are patently off point) we provided a thorough explanation of CEQA law as it relates to exemptions.<sup>24</sup> As we have had to repeat *ad nauseam* for over nine months, the City has complied with CEQA.

That being so, if the Commission chooses to disagree with our determination that the proposed detachment is exempt, at this point LAFCo's options are limited.<sup>25</sup> The determination has not, and now cannot, be challenged under section 21167, as the statute of limitations on that challenge has lapsed.<sup>26</sup> There is no evidence of changed circumstances as defined by CEQA Guidelines section 15162. Should the Commission disagree with our determination, the only path forward for LAFCo at this point is to assume lead agency status under CEQA Guidelines section 15052 and to prepare the environmental documents it determines are appropriate. While the City would be very interested in any analyses LAFCo performs as the lead agency on the proposed detachment, this is an option the law makes available to LAFCo. But what LAFCo staff may not do is continue to insist on a standard that has no basis in law.

3. The City's Application is Complete, and LAFCo Staff's Position that the Detachment Application Cannot be Completed Until an Updated SOI is Performed Contradicts the Cortese-Knox-Hertzberg Act and LAFCo's Own Policies.

LAFCo staff have taken the position that the City's MSR/SOI Update process must be completed prior to Commission consideration of the proposed annexation. LAFCo staff has asserted this position in relation to many of the City's other pending applications. As the City's Special LAFCo Counsel, Mr. Michael Colantuono's attached letter<sup>27</sup> makes clear that the City continues to respond that LAFCo staff's position is supported neither by the law or by LAFCo policy.

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<sup>21</sup> See Exhibit G.

<sup>22</sup> Call between LAFCo staff and City representatives on February 25, 2021.

<sup>23</sup> See Exhibits A, B, and G.

<sup>24</sup> See February 25, 2021, email from Philip Williams to LAFCo's General Counsel Scott Browne, with cc to Uma Hinman. Attached as Exhibit I.

<sup>25</sup> Once a lead agency determines not to prepare an EIR or negative declaration, that determination is "final and conclusive" unless: (1) the decision is successfully challenged under Public Resources Code section 21167; (2) circumstances change as provided by CEQA Guidelines section 15162; or (3) a responsible agency becomes lead agency under CEQA Guidelines section 15052. (CEQA Guidelines section 15050.)

<sup>26</sup> Public Resources Code section 21167(d); *Apt. Ass'n of Greater L.A. v. City of L.A.* (2001) 90 Cal.App.4th 1162, 1171 [if no notice of exemption is filed, 180-day limitations period applies]; *City of Chula Vista v. County of San Diego* (1994) 23 Cal.App.4th 1713, 1720 [applying 180-day limitations period].

<sup>27</sup> See Mr. Michael G. Colantuono's April 26, 2021, letter to the LAFCo Commissioners and Ms. Hinman. Attached as Exhibit J.

Neither CKH nor LAFCO's Policies and Procedures Manual ("Policies") require a current sphere of influence to complete an application for detachment. Paragraph 11.4.2 ("Application Materials") of subsection 11.4 ("Application Requirements") of section 11 (General Application Requirements") of LAFCO's Policies states:

Applications to the Commission must contain all the information and materials required by the CKH Act (G.C. §56652 and 56653), including a plan for services, as well as the applicable fees or deposit toward fees as specified by the LAFCO Fee Schedule.<sup>28</sup>

Neither this Paragraph 11.4.2 nor the cited Government Code sections require a current sphere of influence to accompany a detachment application. Having recently submitted the Metes and Bounds Description,<sup>29</sup> the City's Detachment Application is ready to be submitted to the County for the tax sharing process described in Revenue and Taxation Code, section 99.

Furthermore, under the Cortese-Knox-Hertzberg Act, the Executive Officer has a ministerial duty to issue a Certificate of Filing when the "application for a change of organization or reorganization meets submission requirements and is accepted for filing."<sup>30</sup> Through its position, LAFCo staff indicate the Executive Officer will refuse to issue such a certificate until the City's MSR and SOI are updated. Neither CKH or LAFCo's Policies and Procedures Manual require an "updated" municipal services review or sphere of influence to complete an application for detachment.

Any shortcomings in or staleness of the City's SOI, if indeed there be any, directly result from LAFCo's own failure to comply with its statutory obligation to update the City's sphere of influence "every five years ... as necessary"<sup>31</sup> and with its own Policies<sup>32</sup>. Only LAFCo has an affirmative duty to update its sphere of influence determinations, which, as with its other determinations, are final and conclusive,<sup>33</sup> and the City has a right to pursue changes in organization within that defined planning area. That LAFCo has not updated the City's SOI since 1984 must be because LAFCo did not feel it was necessary to do so and should not now serve as a basis for the Executive Officer to prevent the City from advancing this application so that we may get the hearing the law provides for. There is nothing in the City's MSR or SOI that prevents the Executive Officer from issuing a Certificate of Filing so that the Commission can weigh the merits of this change in organization. The Executive Officer's refusal to do so until the City's MSR and SOI are updated is likely a prejudicial abuse of discretion.

Finally, while the Executive Officer may request additional data and information, that request must be reasonable and consistent with CKH. Here, LAFCO's argument fails to consider that CKH and LAFCO's own Policies give it the obligation to update the MSR and sphere of influence. The Executive Officer may request additional data and information, but that request cannot serve to reassign to the City LAFCO's statutory duty to prepare these updates. It would be unreasonable to permit the Executive Officer to rewrite CKH through her requests or to use them to blockade a proposal.

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<sup>28</sup> LAFCO's Policies, p. 29.

<sup>29</sup> See April 20, 2021, letter from Mr. Williams to Ms. Hinman regarding the metes and bounds description for the Detachment Application. Attached as Exhibit L.

<sup>30</sup> Gov. Code, § 56020.6.

<sup>31</sup> Gov. Code section 56425, subd. (g), emphasis added.

<sup>32</sup> Policies 10.1.3.

<sup>33</sup> See Gov. Code section 56107, subd. (b).

Furthermore, changes in organization like this one and others pending before LAFCo staff, many of which have already been called for in public documents<sup>34</sup> advance LAFCo's mission and comport with its Guidelines (see Policies 1.1 ["Mission"] and 1.2 ["General Guidelines"]) and deserve to be considered. Continuing to refuse to advance the City's applications, including this one, puts at risk the health, safety, economic vitality, and future of our neighbors in the Ukiah Valley. While we are personally sympathetic to the fact that the Executive Officer has inherited a legacy of nonfeasance, her recalcitrance to ensure LAFCo performs its current obligations under the law and to our neighbors in Ukiah Valley is untenable. The derelictions of the past cannot define our future anymore.

In providing you with the suite of exhibits we have, we emphasize that the three issues above and currently under discussion are but the latest in a long line of requests, concerns, and issues that LAFCo staff have made and raised, many of which have proven illusory and many of which still have yet to be supported by LAFCo staff. While many of the issues discussed in the exhibits are ancillary, at the very least they should demonstrate the tireless efforts the City has made to comply with LAFCo staff's various requests for additional information and documents associated with this Detachment Application. Those efforts include not only significant time by City staff but also significant time and effort by multiple outside consultants and attorneys. Indeed, the issues addressed above do not include many others, including the issue of the indemnification language in LAFCo's Fee Agreement, on which we went to great lengths to educate LAFCo staff and the Commission<sup>35</sup> and which the LAFCo Policies Committee just recently decided on (we take this opportunity to note that the Second Appellate District's opinion in *San Luis Obispo Local Agency Formation Commission, et al., v. City of Pismo Beach, et al.*, validates the City's efforts to amend that language<sup>36</sup>).

As the record clearly demonstrates, at every step we have labored to respect and respond to LAFCo staff's nearly unending requests, insisting all the while on the rule of law, sound public policy, and the best interests of our community. We remain committed to the same path, trusting it is the path toward clarity and resolution.

We know these are trying times and that the past year has been a difficult one. Thank you for your consideration and for your service to our community.

Yours Sincerely,



Philip A. Williams  
Special Counsel, City of Ukiah

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<sup>34</sup> See, e.g., the Ukiah Valley Area Plan, Ukiah's Municipal Service Review, and the 2019 Grand Jury Report entitled Ukiah Valley Sanitation District: Change and Transparency Needed.

<sup>35</sup> See September 16, 2020, letter from Mr. Williams to LAFCo Commissioners and Uma Hinman. Attached as Exhibit K.

<sup>36</sup> "A city and a developer applied to the San Luis Obispo Local Agency Formation Commission (LAFCO) to annex a parcel of real property to the city. LAFCO denied the application and the city and developer brought an action to challenge that decision. LAFCO prevailed and brought this action to recover attorney fees under an indemnity agreement contained in the annexation application. The trial court granted the city and developer judgment on the pleadings because LAFCO has no authority to require such fees. We affirm." *San Luis Obispo LAFCo*, 2d Civ. No. B296968 (2d Dist. March 3, 2021). As the City made clear in its September 16, 2020, letter (Exhibit K), the language at issue in *San Luis Obispo* is identical to that employed by Mendocino LAFCo; regardless, LAFCo general counsel continued to obfuscate the issue thereby imposing additional, unnecessary, work.

Cc: Sage Sangiacomo, Ukiah City Manager  
Sean White, Director of Sewer and Water  
David Rapport, City Attorney  
Craig Schlatter, Director of Community Planning  
Andrea Matarazzo, Special CEQA Counsel  
Michael Colantuono, Special LAFCo Counsel

Attached Exhibits A - L

# EXHIBIT A



ITEM NO.: 12a

MEETING DATE: November 5, 2014

## AGENDA SUMMARY REPORT

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**SUBJECT: DISCUSSION AND POSSIBLE ADOPTION OF RESOLUTION OF APPLICATION TO THE MENDOCINO LOCAL AGENCY FORMATION COMMISSION TO DETACH FROM THE UKIAH VALLEY SANITATION DISTRICT THE PORTION OF THE DISTRICT LOCATED IN THE CITY LIMITS**

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**Summary:** A portion of the City has remained part of the Ukiah Valley Sanitation District ("District"), even after those areas were annexed to the City. This area, called the "overlap" area, is comprised of 1304 parcels and is depicted on the map attached as Attachment 1. As explained in more detail below the staff is asking the City Council to approve a resolution of application to the Local Agency Formation Commission ("LAFCO") to detach the overlap area from the District. Since 2010, the District has been seeking greater and greater independence from the City. These efforts have and will continue to increase the cost of providing sewer service to City residents, disrupt the provision of municipal services to City residents, subject City residents to duplicative and unnecessary administrative expenses, and cause unnecessary confusion for City residents. Detaching the overlap area from the District will avoid these adverse effects and provide oversight and control of sewer service in the City by one local government rather than two.

**Background:** In 2011, the City Council appointed an ad hoc committee consisting of Councilmembers Baldwin and Landis to meet with an ad hoc committee of the District to discuss possible changes to the 1995 Participation Agreement between the City and the District under which the City provides sewer service to both the City and the District. A facilitator was hired for the meetings. In September 2011, the facilitator submitted a report to the City and the District reporting on proposed changes to the Participation Agreement supported by a majority of the members of the combined ad hoc committees.

On October 5, 2011, the City Council approved a letter to the District responding to that report. The proposed changes to the Participation Agreement would change the existing arrangement for providing

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**Recommended Action(s)** Adopt the resolution of application, and direct staff to submit to the LAFCO Executive Officer the required documents to initiate detachment proceedings before LAFCO, request from the County Assessor the necessary property tax information to begin negotiations with Mendocino County for a property tax exchange agreement and take other steps necessary and appropriate to process the application. Require staff to report to the City Council the progress in processing the application and to promptly seek City Council approval as required.

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**Alternative Council Option(s):** Provide staff with alternative direction

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Citizens advised:

Requested by: City Council

Prepared by: David J. Rapport, City Attorney, Charley Stump, Planning Director

Coordinated with: Jane Chambers, City Manager and Tim Eriksen, Public Works Director, Consultants

1. Map of area to be detached

Attachments: 2. October 13, 2011 letter from City Council to UVSD Board

3. November 1, 2011 response letter from UVSD Board to City Council

4. Minutes of December 21, 2011, City Council meeting

5. Resolution of Application to Detach City areas from District

6. Justification of Proposal

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Approved: 

Jane Chambers, City Manager

sewer services to the City and the District. Under the Participation Agreement, as currently written, the combined City/District collection system and the wastewater treatment plant are treated as one system which the City operates and maintains and the City provides billing and collection services for both the District and the City. All of the costs are allocated between the City and the District based on the ratio of "equivalent sewer service units" (ESSUs) in the City and the District.

The proposed changes would require expenses of the collection system to be paid by the District, if the expense were incurred in the maintenance or repair of the District's collection system and by the City, if the maintenance or repair were incurred in the maintenance or repair of the City's collection system. The costs of operating and maintaining the wastewater treatment plant would continue to be apportioned based on ESSUs. The District would be authorized to assume billing and collections for District customers and to assume the maintenance and repair of the District's collection system.

The City had a number of questions about the proposals and concluded that additional negotiations would be necessary to address those questions. At that meeting the City Council concluded that these negotiations needed to include detachment from the District of the overlap area, since the impacts of these changes are very different, if the District and the City are geographically separate jurisdictions. It authorized a letter to the District, attached as Attachment 2, which notified the District that continued negotiation of these changes to the Participation Agreement would have to include negotiations over detachment. The letter also included an analysis the City had done which showed the financial impact on the District resulting from the detachment of the overlap area.

On November 1, 2011, the District responded by letter, stating that it was unwilling to include negotiations over detachment in these negotiations. (See Attachment 3.) At the December 21, 2011, City Council meeting, when it considered the District's response, the City Council directed staff to write a letter offering to meet and discuss detachment once the District believes it has sufficient information to meet and discuss detachment. (See Attachment 4, minutes of items 13.c on agenda for that meeting.)

In the three years since the City sent the District the City's analysis of the financial impact of detachment on the District, the District has made clear that it is unwilling to discuss detachment. At the same time, the District appears to be determined to press forward with these changes to the Participation Agreement and to assume responsibility for maintenance and repair of its collection system and for billing its customers and collecting the fees paid by its customers.

In October 2013 the District filed a law suit against the City seeking as much as \$40 Million in damages for alleged wrongs going back to 1967. On October 17, 2014, the District sent the City a resolution adopted by its Board of Directors on October 16, authorizing the District's chairman to give notice to the City that the District is terminating the Participation Agreement.

Based on these events, the City faces the following situation. Beginning in 2010 the District established rates for monthly sewer fees and connection fees that are different from the City's. The District has adopted some regulations for sewer service that differ from the City's. Currently, City residents benefit from the City providing sewer services to both the District and the City. The City can use the same crews to maintain both its water and sewer system, reducing the cost of providing sewer services by sharing the cost of these employees with both utilities. These City employees can share facilities and equipment that are used by multiple City departments, allowing the costs of those facilities and equipment to be shared by those departments. They can be supported by administrative services that serve all City employees, such as payroll, human resources, and accounting. The City Engineer provides engineering services to the sewer system and to the other City departments and utilities. These costs can be apportioned among the City enterprise funds and its general fund. City residents receive a consolidated utility bill from the City and have various ways to contact the City with questions about their bill. The billing costs are shared among all of the City's utilities.

Despite these advantages, the District seeks to separate itself further from the City and begin providing maintenance and repair of its collection system and billings and collections to its customers. It has no

experience providing these services. It has not presented a plan to the City on how it proposes to provide these services and at what cost. The provision of sewer service has become an increasingly regulated service subject to both state and federal requirements enforced by the North Coast Regional Water Quality Control Board. The collection system is subject to waste discharge requirements imposed by the Regional Board with very expensive mandatory fines, if those requirements are violated.

These circumstances make detachment vitally important to the City's ability to serve all of its residents with cost-effective municipal services. The City's ability to promote economic development in the City is undermined, if it does not have control over sewer connection fees for new businesses that want to locate in the City. The District's connection fees already may have discouraged some businesses from locating in the City. For example City staff knows of a restaurant inside the City limits that abandoned expansion plans when it learned there would be UVSD connection fees based on added seating. The City would not have charged these additional fees. A new restaurant inside the City limits was charged a UVSD connection fee of \$51,587 (lowered by UVSD from an initial calculation of \$85,069) where the City's fee would have been \$23,500.

With no willingness on the part of the District to discuss detachment, on July 16, 2014, the City Council authorized the retention of a consultant and a law firm with expertise in detachment proceedings to assist the City in applying to LAFCO to detach the City from the District

**Basic Steps in the Proposed Detachment from Ukiah Valley Sanitary District.** The following describes the process required to detach the City territory from the District.

*Step 1 -- Application to LAFCO*

- Transmittal letter
- Resolution of application adopted by the City Council
- Completed LAFCO Proposal Questionnaire
- Map and legal description of proposed detachment area
- LAFCO processing fee

*Step 2 -- LAFCO review and approval/denial*

- Receive application including City Council resolution
- Receive property tax exchange agreement by Board of Supervisors and City Council
  
- Issue Certificate of filing; clock starts running
- Provide published, posted and mailed public notice of hearing
- Prepare Executive Officer's report and recommendation, include factors LAFCo must consider
- LAFCo conducts public hearing for testimony, not to count written protests
- LAFCO adopts resolution making determinations; assigning terms and conditions and setting an effective date; since LAFCo is a quasi-legislative agency, no findings of fact are required
- City submit and LZAFCO review maps and legal descriptions

LAFCo staff issues a notice of exemption

*Step 3 -- Conducting Authority hearing and decision*

**Public notice** -- publish, post, mail

**Number of written protests determines the outcome:** **(1) terminate proceedings** (50% or more of the registered voters or landowners file written protests), **(2) order the change subject to an election** (at least 25 percent, but less than 50 percent, of the registered voters residing in the affected territory or at least 25 percent of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory file written protests), or **(3) order the change without conducting an election** (less than 25% of the number of owners of land who also own at least 25 percent of the assessed value of land within the affected territory file written protests)

*Step 4 -- Election, when required is conducted by County of Mendocino*

If required, an election is held in the detachment area

Vote results – a majority is needed

Board of Supervisors adopts resolution declaring results of election

*Step 5 – Final filing by LAFCO staff*

LAFCO staff reviews resolution for conformance with LAFCO approval

LAFCO issues and records a Certification of Completion

LAFCO files detachment with State Board of Equalization et al

**Adopting Resolution of Application.** Attached as Attachment 5 is a proposed Resolution of Application which will initiate the process of seeking LAFCO approval of detaching the overlap area from the District.

A cover letter, LAFCO questionnaire, various exhibits and a \$5000 filing fee will accompany the resolution when it is submitted to LAFCO. (See Attachment 5.) The cover letter will point out that detachment requires approval after two public hearings are held: (1) a hearing before LAFCO to approve the detachment (Step 2, above) and (2) a protest hearing as described under Step 3, above. Only after LAFCO approves the detachment, will the residents and landowners within the detachment area have the opportunity to decide for themselves whether they support the detachment. If LAFCO fails to approve the detachment, these residents and landowners will be deprived of the opportunity to express their views on whether the detachment should proceed.

The Executive Officer of LAFCO cannot file the application and initiate a hearing on the application, until the City files a property tax exchange agreement with the Mendocino County Board of Supervisors. That agreement will determine how the property taxes currently received by the District from property in the detached area are handled after the detachment becomes effective. Once the application is submitted to LAFCO, the City will request the County Assessor to report the property tax data for the overlap area. With that information in hand, the City will initiate negotiations with the County for the required tax exchange

agreement. The Board of Supervisors must negotiate that agreement in good faith. District approval of the agreement is not required.

The Resolution of Application is required to identify the conditions the City requests LAFCO to impose, if it approves the detachment. Under Government Code Section 56886, LAFCO is empowered to condition a local government change of organization, including a detachment, on a variety of requirements. These can include the disposition, sale, transfer or division of real or personal property (subd. (h)), the disposition, transfer or division of any money or funds, including cash on hand and money due but uncollected (subd. (i)), the payment of any outstanding bonded indebtedness, including revenue bonds (subd. (c)) and any other matters necessary or incidental to any of the terms and conditions included in Section 56886.

The conditions proposed in the resolution are:

A. **Transfer of real property** –Transfer to the City of all real property and easements currently held by the District within the detachment area.

B. **Transfer of physical assets** - Transfer to the City all of the District’s physical assets comprising its waste collection system within the detachment area.

[The Public Works Department is preparing a map showing all of the sewer mains and other facilities within the overlap area and which of these facilities only serve the overlap area and which facilities will continue to serve both the City and the portion of the District outside the overlap area.]

C. **Sharing facilities and costs** –

(1) After the detachment is completed, the City and District shall continue to share infrastructure and costs required to collect and treat wastewater originating in the District and the City in accordance with the existing Participation Agreement, as amended, between the City and the District.

(2) Except as provided in subsection (3), below, the District shall continue to pay its share of the debt service on the bonds (“WWTP bonds”) issued in 2006 to upgrade and expand the City owned wastewater treatment plant (“WWTP”) in accordance with the Financing Agreement between the City and the District.

(3) The District’s proportionate share of the expansion portion of the debt service for the WWTP bonds shall be modified from the current 65% to a fraction in which the denominator is 2400 Equivalent Sewer Service Units (“ESSUs”), as defined in the Participation Agreement, which is the number of ESSUs resulting from the WTTTP expansion project, and in which the numerator is the number of those ESSUs already assigned to the District as a result of new connections within the portion of the District outside the overlap area plus the number of ESSUs required by the District to satisfy the demand for new connections in the reduced District territory and in the District’s sphere of influence.

D. **Transfer of monetary assets** – Upon completion of the detachment, a proportionate share of District’s monetary assets, including cash on hand, and all reserve funds, including the rate stabilization fund which are properly attributable to the overlap area shall be transferred to the City. This amount shall be determined by multiplying all of these funds by a fraction the denominator of which is the total revenue received by the District in the five full fiscal years prior the effective date of the detachment and the numerator of which is the amount of such revenue from the overlap area. District shall provide an accounting for the purposes of distribution of all monetary assets, including, but not limited to, cash on hand, reserve funds of all types, amounts due and payable, and state and federal grant amounts.

E. **Change in property tax allocation factors** –For the fiscal year following completion of the detachment, and in subsequent fiscal years, the property tax apportionment factors allocated to District within the detachment area shall be reapportioned to the City pursuant to section 99 of the California Revenue and Taxation Code.

F. **Appropriations limit** – Coincident with the detachment a portion of District’s appropriations limit equal to the amount of property tax reapportioned from the District to the City shall be transferred to the City.

The City will have to provide a legal description of the overlap area before the detachment can be finalized. The City will propose to prepare that description after the detachment is approved, but before it is finalized. This will allow the City to incur this expense only after it knows that the detachment has been approved.

**Recommendations:**

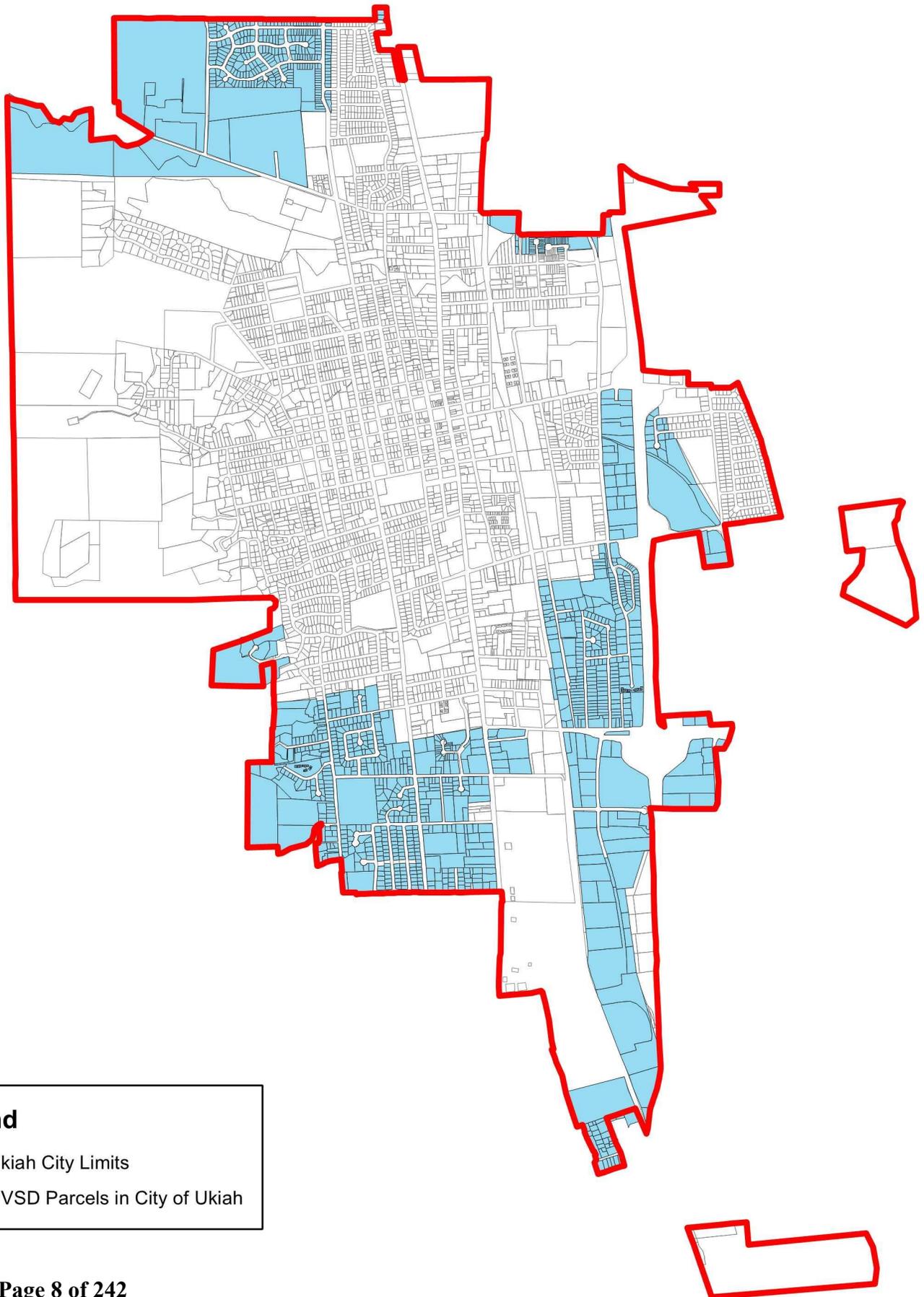
Staff recommends that the City Council adopt the resolution of application, and direct staff to submit to the LAFCO Executive Officer the required documents to initiate detachment proceedings before LAFCO, request from the County Assessor the necessary property tax information to begin negotiations with Mendocino County for a property tax exchange agreement and authorize staff to take other steps necessary and appropriate to process the application. Require staff to report the progress in processing the application and to promptly seek City Council approval as required.

**Fiscal Impact:**

Budgeted FY 14/15     New Appropriation     Not Applicable     Budget Amendment Required

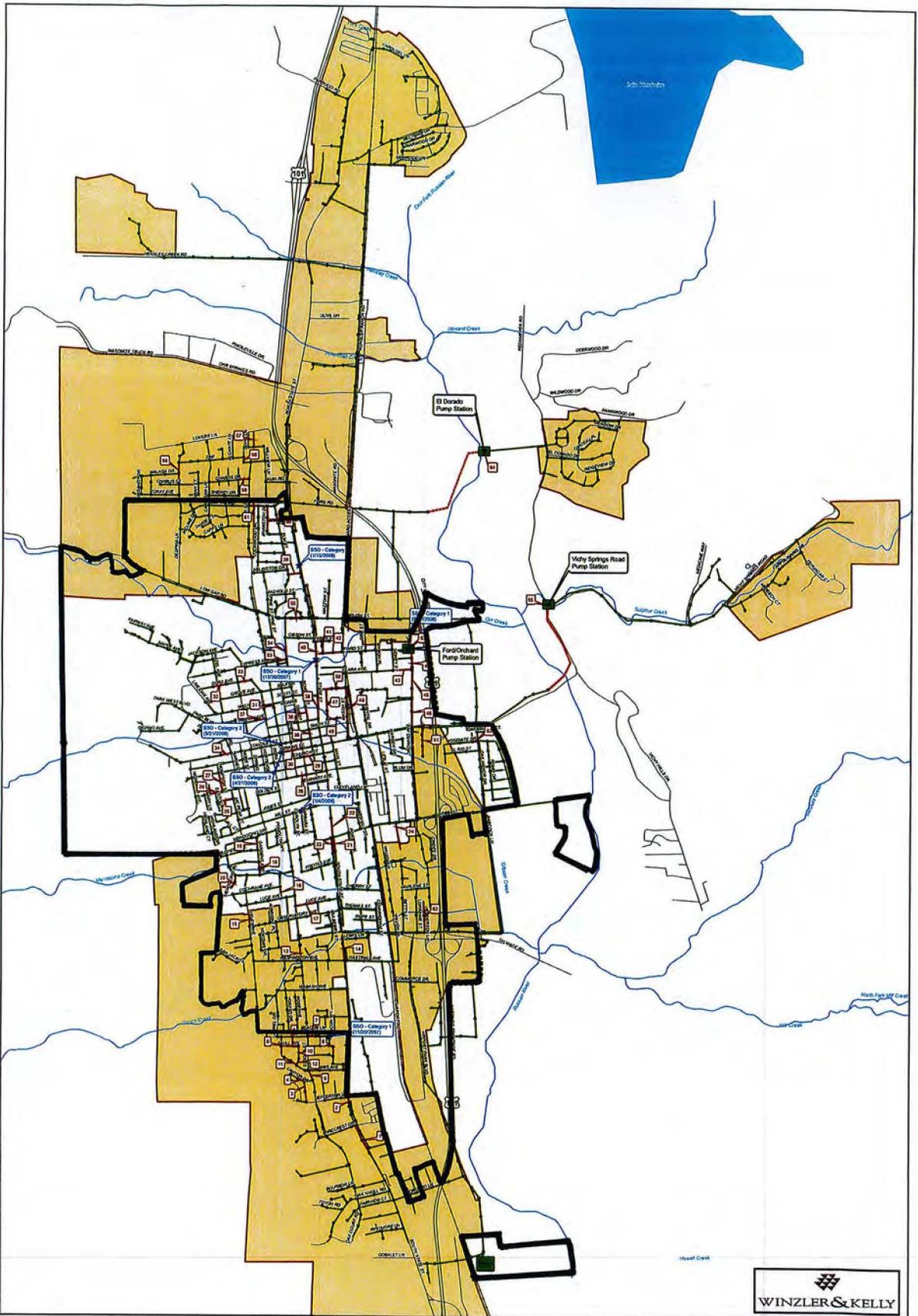
<u>Amount Budgeted Requested</u>	<u>Source of Funds (title and #)</u>	<u>Account Number</u>	<u>Addit. Appropriation</u>
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# UVSD Parcels within Ukiah City Limits



## Legend

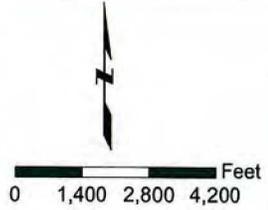
-  Ukiah City Limits
-  UVSD Parcels in City of Ukiah



4/20/09 - City of Ukiah/02502.DWG, SS&M/Map&O and M/ur



- Legend**
- ★ Sanitary Sewer Overflow (SSO)
  - Sanitary Sewer Manholes
  - Sewer Maintenance
  - Sanitary Sewer Gravity Pipe
  - Sanitary Sewer Force Main
  - Streets
  - Rivers and Streams
  - Sanitary Sewer Pump Stations
  - Sanitary Sewer Treatment Plant
  - Ukiah City Limits
  - Ukiah Valley Sanitation District



**City of Ukiah/Ukiah Valley Sanitation District  
Operation and Maintenance  
Sanitary Sewer Basemap**

Sewer System Management Plan  
Mendocino County, California

02502-07-002  
April 2009






October 13, 2011

Board of Directors  
Ukiah Valley Sanitation District  
387 North State Street, Suite 101  
Ukiah, CA 95482

Dear Board members:

The City Council has reviewed the Draft Revised Participation Agreement prepared by Dave Smith which the City Council understands sets out those changes to the Participation Agreement, including Amendment No. 1, but not Amendment No. 2, which have been agreed upon by a majority of the combined City and District ad hoc committee members.

The City Council has considered input from City staff and the City Attorney in its review of the proposed changes. It appears to the City Council from Dave Smith's comments in the right-hand margin that there may need to be further revisions to the proposed changes to the agreement, based on additional input from staff and the ad hoc committees.

It is also possible that the City Council does not fully understand the intent behind some of the proposed changes and that its concerns, as expressed in this letter, will be addressed by a better understanding of that intent.

With these caveats the City Council believes that a formal written response to the work of the ad hoc committees, at this time, is timely and may provide a path for reaching final agreement on changes to the Participation Agreement that will address most, if not all, of the difficulties which have plagued the relationship between the City Council and the District Board, since it was expanded and became directly elected.

The City Council has some preliminary general comments which are followed by comments on the specific proposed revisions to the Participation Agreement, including some changes proposed by the City Council which were not considered by the ad hoc committees.

**Preliminary General Comments**

In relation to changes to the Participation Agreement, the City Council's primary responsibility is to the City's sewer system ratepayers and to the residents of the City. That responsibility comes before adopting any changes to the Participation Agreement proposed by the 2008 ad hoc committee or the Board of the Sanitation District. Accordingly, before the City Council can agree to any changes to the Participation Agreement, it must determine how that change will affect City ratepayers and City residents. The City Council may agree to changes that primarily benefit the District, if

that change is made in exchange for a change that benefits the City ratepayers and residents.

Based on this standard, the City Council has concluded that any change to the Participation Agreement must include an agreement on detaching City territory from the Sanitation District. It makes no sense for some City residents to receive sewer service from the City and other City residents to receive sewer service from the District, especially now that the District's monthly sewer charges and connection fees are different from the City's. The arrangement is inherently confusing to ratepayers and is necessarily inefficient, since City employees using City equipment actually provide the service to all City residents as well as District ratepayers. There is no rational justification for a separate governing board and the inevitable separate bureaucracy to provide sewer service to some City residents, when all City residents have representation through their election of City Council members and when the City is already providing the service to all City residents.

Some of the proposed changes to the Participation Agreement make detachment even more important. Under the proposed changes, the District reserves the right to discontinue using the City for billing and collections. This change creates the potential for some City residents to receive a consolidated utility bill (water, sewer, garbage, electricity, street lights) which is administered and paid through the Civic Center and the City's website, and other City residents to either receive a separate sewer bill from the District or be forced to pay sewer fees through their property tax bills.

Moreover, the impact of these and other proposed changes to the Participation Agreement on the City and its residents is very different, if the District includes City territory or that territory has been detached from the District. This provides another reason supporting the City Council's conclusion that these changes to the Participation Agreement cannot be negotiated separately from detachment.

Finally, the District has proposed changes to sections 3 and 5 of the Participation Agreement that enhance its ability to serve an as yet undetermined District sphere of influence and District annexations. The City should not be expected to ignore detachment in discussing these changes to the Participation Agreement, when the District is seeking changes to enhance its ability to serve areas outside its existing boundaries.

The City has commissioned an assessment of the financial impact on the District and the City of detaching City territory from the District. That study is enclosed. The City Council is prepared to discuss this study with the District and is open to discussing ways to mitigate any potential financial impacts on the District resulting from detachment. The City Council is also prepared to discuss sharing with District the cost of operating and maintaining the trunk line from the WWTP to Ford Road on the same basis that it shares the use of the WWTP with the District. The City Council also notes that under Amendment No. 2 to the Participation Agreement, the City and the District have agreed to revise the allocation of ESSUs from the expansion of the WWTP in the event of such

changes as detachment of City territory from the District. Those negotiations can also mitigate the financial impact on the District from detachment.

The City Council also does not believe that the current practice of negotiating changes to the Participation Agreement solely between elected members of the subcommittees is the most efficient way to achieve final agreement. At this point in the process, the City Council believes that staff from both the District and the City, including legal counsel, should participate in all future meetings. The elected officials can benefit from the expertise available from staff and staff will better serve elected officials, if they can be present during the discussions rather than depend on the elected subcommittee members or the outside consultant to describe those discussions for staff and other Board and Council members.

**Specific responses to the proposed changes to the Participation Agreement.**

**1. Section 1.**

**General comment on Changes.** In the City Council's opinion, the proposed changes to section 1 of the Participation Agreement will make budgeting and accounting much more complicated than the current system of treating the combined City-District systems as one system and sharing all expenses of the entire system in proportion to sewer service units. Since the District is seeking these changes, it should bear all of the added costs.

**A. Apportioning annual costs of treating sewage, including operation, repair and replacement, upgrading and debt service of WWTP based on ratio of City to District sewer service units.**

**Comment:** The City Council is not opposed to treating capital projects that increase capacity separately from these other costs and making separate agreements on apportioning the costs of such capital projects on a case by case basis.

**B. Apportioning costs of repair, rehabilitation, replacement and capacity upsizing to meet demand of existing connections of the Trunk Sewer from WWTP to Ford Road, including any future debt service based on ratio of City to District sewer service units at time of repair, etc.**

**Comment:** The amendment should address how the parties will make a decision to repair, upsize, etc.? The City Council would also like a description of the circumstances that could require an increase in capacity of the trunk line to meet demand of existing connections.

**C. Apportioning annual costs for maintenance and operation of City and District sewer collection system, including trunk sewers based on actual cost to be allocated**

to the parties at the end of each fiscal year and estimated for the next fiscal year according to Section 13.

**Comment:** As previously stated, this proposal places a significant new burden on City to set up a system for tacking expenses and then using the system on an on-going basis. Since this is a method for charging cost sought by District, it should pay the added cost for developing and using it.

**D. Each party to pay the cost to repair, rehabilitate, replace, upsize and expand (to meet demand of existing connections) and any associated debt service for its collection system, including trunk sewers, except District trunk sewer from WWTP to Ford Road.**

**Comment:** In the City Council's opinion this change has very different impacts on both parties, depending on whether City territory is detached from District territory. The City Council's willingness to change the Participation Agreement from the current approach of a unified system depends on detaching City territory from the District.

**E. Apportioning annual cost for providing insurance and financial services relating to operation and maintenance of WWTP and City and District collection systems, including trunk sewers, based upon ratio of City revenue to District revenue from monthly sewer fees.**

**Comment:** The rationale is unclear for sharing these costs based on income and other shared expenses based on sewer service units. It is not necessarily true that the burden of financial services, including billing and collections, is more proportional to income than sewer service units. The City Council is willing to consider this change if the rationale is further explained and the City Council is convinced that apportioning these costs on a different basis than other costs is sufficiently important to justify the added complexity.

**F. District can reject proposed costs established by City for providing billing and collection services to District. City can refuse to provide billing and collection services. Either party can make that election on 90 days notice.**

**Comment:** This change to Section 1 of the Participation Agreement does not address the time and costs associated with the transition, other issues associated with the transition, or the City's liability for bills in collection, when a 90 day notice is given. If the District elects to take over billing and collection, it should be required to provide adequate time for the transition to occur, provision must be made for the transfer, including bills in various stages of collection, and the costs incurred by the City to make this transition. The District should also be required to indemnify, defend and hold City harmless from any liability to District or District customers arising out of or resulting from the transfer of billing and collection functions from the City to the District. As

previously stated, this provision negatively impacts City residents, if it were adopted before detachment.

## Section 2

**Continues City obligation to provide \$5 M liability and property loss insurance with comment that provision should be revised to provide E&O insurance for District Engineer and work done by each entity for the other.**

**Suggested addition by City:** The City Council proposes the following change to Section 2 that was not considered by the ad hoc committees: The City's liability to the District for any services provided by the City pursuant to this Agreement shall be limited to claims within the scope of coverage and policy limits of the insurance. District waives and agrees to hold City harmless from any claims by District not covered and paid by the insurer issuing the policy required by this paragraph. The insurer must waive any recourse against the District or the City for claims covered by and paid by the insurer. References to City in this paragraph include the City's employees, officials, and officers.

**Reason:** The District currently shares the cost of operating the sewer system based on the budget which reflects the actual cost to provide the service. The budget does not include funds set aside to cover damages claims by the District against the City that the City has failed to perform those services in accordance with the Participation Agreement or has been negligent in the performance of those services. Under these circumstances the City is exposed to liability to the District, but it is not paid to assume that liability. Under this addition to the Participation Agreement, the parties would share the cost of insurance and the District would agree to restrict its recourse against the City to claims which are covered by the insurance. In that way the City is protected from assuming a liability it has not been paid to assume.

## Section 3

**A. City shall not unreasonably deny a request from the District to expand WWTP to accommodate "lawful" growth in District and its sphere of influence. The District is liable for all costs of the expansion, if the expansion serves only future District customers and customers in its sphere of influence.**

**Comment:** The term "lawful" should be revised to "growth that is permitted by Mendocino County's general plan and zoning ordinance."

The City Council does not object to this language as it applies within the District's boundaries, after detachment. However, the District doesn't currently have a sphere of influence. Before the City Council can agree to this proposal, it needs to know what territory the District contemplates as being within that sphere and the revision would have to describe that area. The City Council is unlikely to agree, if the District

contemplates a sphere of influence that will overlap with the sphere of influence proposed by the City's 1995 General Plan.

**B. Introduces for first time the statement that title and control of Trunk Sewer from WWTP to Ford Road remains with District. This provision includes a parallel provision to A, that District won't unreasonably deny a City request to upsize or extend the Trunk Sewer for purpose of accommodating lawful growth in City with the City liable for improvements which only serve new connections in the City.**

**Comment:** The term "lawful" should be revised to: "growth that is permitted by the City's general plan and zoning ordinance."

The proposed revision is limited to the City limits. If A will apply within the District's sphere of influence, the City Council will expect this provision to include the City's sphere of influence.

#### **Section 4**

**This section is changed to prohibit the City from contracting to operate its treatment plant for any person, firm or corporation without the consent of the District.**

**Comment:** The City Council does not understand the meaning of "operate its treatment plant for any person," etc. This phrase needs to be explained before the City Council can comment.

#### **Section 5**

**The section currently requires approval from the City for the District to provide sewage treatment for any person, firm or corporation outside District's boundaries. The revision allows the District at its expense to utilize packaged treatment system or systems to treat sewage within "the annexed area" or within the District and to discharge pre-treated effluent to sewer trunk lines as long as the District does not exceed its allotted sewer service units.**

**Comment:** Currently, the District does not have a sphere of influence. Accordingly, it cannot annex additional territory. As stated previously, the District needs to identify the area it intends to annex in order for the City Council to consider this proposal.

In addition, in the City Council's opinion, the use of packaged treatment or pre-treatment systems is more complicated than the proposed revision acknowledges. Dave Smith's comment recognizes that a definition is needed of how the level of treatment relates to ESSU reduction. There are a number of other issues that will have to be addressed, including the procurement of the systems, the installation, operation and maintenance of

the systems, repair and replacement of the systems, the funding for the systems, including depreciation and replacement, and liability arising from the operation, maintenance, repair and replacement of the systems. All of these issues can affect the City's WWTP.

### Section 6

The City Council seeks a revision to Section 6, not considered by the ad hoc committee, to address its concern about the District's right to approve the sewer budget, which was gained by the District for the first time in Amendment No. 1 to the Participation Agreement, which amendment was approved before the District adopted a five member directly elected Board. The current system disrupts the City operations and the dispute resolution provision is awkward and does not provide a timely resolution for disputed items. It also becomes less necessary to involve the District in the City's budgeting process as the agreement morphs from a sharing of the unified costs of the entire system to sharing costs of the WWTP and each party paying for the costs to maintain its separate collection system and possibly billing, collections and other financial services.

The City Council would like to negotiate an alternative through the ad hoc committees that makes sense for both parties.

### Section 9

**Comment:** The City Council proposes to revise the agreement to reflect current practice by giving the City the option of installing sewer laterals for new connections or requiring a property owner or developer to install the lateral subject to inspection and approval by the City.

### Section 11

No changes are proposed to this section which provides that the District will establish by ordinance or resolution such rules and regulations as are necessary for the orderly administration of the District's system. The City Council proposes the following revisions, not considered by the ad hoc committees, which are underlined:

District will establish by ordinance or resolution, as appropriate, such rules and regulations as are necessary for the orderly administration of District's collection system; provided, however, that any rules and regulations governing the trunk line from the WWTP to Ford Road must be approved by the City Council. These rules and regulations shall include the use of the public sewers and drains, the installation of sewer lines and connections in buildings, the installation of sewer laterals and public sewer mains and the extension of these, the discharge of waters and wastes into the public sewer system, and sewer fees and charges, including connection fees, service fees, and capacity charges. Said rules and regulations shall meet all regulatory requirements governing sewage

collection systems, including waste discharge requirements for the District's collection system and the Waste Water Treatment Plant.

## Section 12

City Council proposes to change "will" to "shall" in the first sentence in this section.

## Section 13

**(1) The changes to this section require all revenues received from City and District sewer system customers to be held in separate accounts. (2) The proposed changes require the City to implement and use a work order or other job tracking system to keep track of hours worked, equipment used, and materials used, when working on the City's collection system and the District's collection system. The tracking system will be used to allocate the actual cost of maintenance, repair, and rehabilitation of the City's collection system to the City and the District's collection system to the District. The proposed changes are somewhat unclear on this point, but it appears that the actual costs for the past year will determine the allocation of costs in the upcoming budget year. (3) The proposed changes to the agreement require the City to charge the District "cost-based" fees for providing engineering services, management and administrative oversight related to the maintenance and operation of the District's collection system. (4) The City and the District must agree during the annual budget process on the charges for engineering services, management and administration for the WWTP.**

### Comments:

(1) This change conforms to current practice, although it should be made clear that the term "accounts" refers to accounts established within the City's budget by account number and does not refer to different bank accounts.

(2) Since the District is requesting and is the primary beneficiary of this change, the District should pay the cost to establish and use this system. If the parties decide that the City should propose a fee for maintaining, repairing and rehabilitating the District's collection system, the tracking system would be useful for verifying that the City's charges are based on its actual costs, but the hourly rates for labor and equipment rental should include an amount to account for direct and indirect overhead as well as the direct expense for those items.

(3) and (4) The terms "engineering services," "management," "administrative oversight," and "administration" need additional definition. (3) appears to refer to the City charges for these services. The City assumes that since it operates and maintains the WWTP that the engineering services, management and administration for the WWTP refers to those expenses incurred by the City.

Clarification of these provisions could address the on-going dispute over sharing administrative costs and could afford an opportunity to resolve the dispute over the 2009-10, 10-11 and 11-12 budget years.

#### Section 14

This proposal should be discussed by the City Council and the District Board. The City Council notes that Water Code Section 1210 provides, in pertinent part, as follows: "The owner of a waste water treatment plant operated for the purpose of treating wastes from a sanitary sewer system shall hold the exclusive right to the treated waste water as against anyone who has supplied the water discharged into the waste water collection and treatment system, including a person using water under a water service contract, unless otherwise provided by agreement."

The current Participation Agreement does not agree to grant the District a right to treated waste water. As stated in the Preliminary General Comments, the City Council would have to be convinced that it is a benefit to the City's residents and sewer system ratepayers to share waste water produced by the WWTP with the District.

The City Council looks forward to productive negotiations through the ad hoc committees on the changes to the Participation Agreement discussed by the ad hoc committees and the issues contained in this letter.

Very truly yours,



Mari Rodin, Mayor

cc: City Council  
City Attorney  
City Manager

RICK KENNEDY  
District  
Manager/Engineer/Clerk

UKIAH VALLEY SANITATION DISTRICT  
387 North State Street, Suite 101  
Ukiah, California 95482  
TELEPHONE AND FAX: (707) 462-4429  
EMAIL ADDRESS: UKIAHVALLEYSO@ATT.NET

WEB SITE  
ukiahvalleysd.com

November 1, 2011

Ukiah City Council  
300 Seminary Ave.  
Ukiah, CA 95482

ATTACHMENT 2



Re: Proposed Revisions to the 1995 Participation Agreement

Dear City Council Members:

The Board of Directors thanks you for your letter of October 13<sup>th</sup> concerning the City Council's position to the proposed modifications to the 1995 Participation Agreement (the Agreement) as submitted by the Ad Hoc Committee. At our meeting of October 20<sup>th</sup>, the Board discussed the two conditions that the City has established for the continuation of our combined effort in modifying the Agreement which were: (1) the District must agree to detachment of its territory within the City limits and (2) City and District staff including legal counsels shall be present when the Ad Hoc Committee meets to discuss the modifications.

The Board unanimously rejected the two conditions set by the City for going forward. Nevertheless, the Board wishes to have the Ad Hoc Committee address the City's and District's comments to the proposed modifications if the above two conditions are removed. The Board also suggests that the Ad Hoc Committee be empowered by both the City and District to formulate recommendations for resolving the outstanding budget disputes.

Sincerely,

Jim Ronco  
Board Chair

**BOARD OF DIRECTORS**

KENT PORTER  
DIRECTOR

JAMES RONCO  
CHAIR

THERESA MCNERLIN  
VICE-CHAIR

KENNETH MARSHALL  
DIRECTOR

MICHAEL PALLESEN  
DIRECTOR

# EXHIBIT B



300 Seminary Avenue, Ukiah, CA 95482  
(707) 463-6217 / [www.cityofukiah.com](http://www.cityofukiah.com)

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November 18, 2014

George Williamson  
Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah CA 95482

Subject: Proposed City Area Detachment from the Ukiah Valley Sanitation District

Dear Mr. Williamson:

The undersigned hereby requests approval of the proposal described in the attached materials. It is proposed to process this application under the provisions of the Cortese/Knox/Hertzberg Local Government Reorganization Act (Government Code Section 56000 et seq.)

The proposal is a detachment from the Ukiah Valley Sanitary District (District) of territory which is within the boundaries of the City of Ukiah (City). As stated in the City's Municipal Service Review, adopted by LAFCo on September 4, 2012, "Given that the City provides many of the services [in the area the City now proposes to detach from the District] through the participation agreement [between the City and the District] the detachment seems reasonable." (See City of Ukiah Final MSR, Sections 2.11, p. 25, and 13.2, pp. 119-120.)

Enclosed in support of this proposal are the following:

- ❖ Certified copy of the City Council of the City of Ukiah Resolution of Application adopted on November 5, 2014
- ❖ Two signed copies of a completed Justification of Proposal.
- ❖ Five copies of an 11" x 17" proposal map showing the affected territory and its relationship to the City of Ukiah and Ukiah Valley Sanitary District;
- ❖ Five copies of an 11" x 17" map showing the Ukiah Valley Sanitation District territory within the City of Ukiah City limits.
- ❖ One copy of Notice of Exemption (15320, Class 20 and 15061 (b)(3)).
- ❖ Processing fee of \$4,000.00 in accordance with the Mendocino LAFCo Fee Schedule.
- ❖ Three copies of a metes and bounds description of the affected territory (will be submitted upon approval).

- ❖ An Excel listing of the 1307 parcels including APN's, site addresses, owner's names and owner's mailing addresses.

We are not submitting the State Board of Equalization fee at this time but will when the proceeding is being filed with the SBE. Additionally, we are not submitting three copies of the *Metes and Bounds* description of the affected territory at this time, in order to conserve the public funds that would be required to prepare the description at this time, but will do so upon approval of the application and prior to finalization of the detachment.

Given the nature of this application, which does not include nor will it result in any changes in land use, public services or environmental impacts, we are not including the following items in LAFCO's list of submittals as they are not relevant to this proposal:

- ❖ Plan for providing services along with a schematic diagram of water, sewer and storm drainage systems (refer to Government Code Section 56653);
- ❖ Pre-Zoning map or description (as required by Section 56375);
- ❖ Statement of Open Space (Ag) Land Conversion (refer to Section 56377);
- ❖ Statement of Timely Availability of Water Supplies (refer to Section 56668(k));
- ❖ Statement of Fair Share Housing Needs (if residential land uses are included in the proposal) (refer to Section 56668(l));
- ❖ Project design (site plan, development plan, or subdivision map); and
- ❖ Residential Entitlement matrix form (if residential land uses are included in the proposal); and

If you believe any of the above items are required for you to determine that the City's application is complete for processing, or if you have any questions, please contact Charley Stump, Director of Planning and Community Development at (707) 463-6219 / [cstump@cityofukiah.com](mailto:cstump@cityofukiah.com).

Sincerely,



Jane A. Chambers  
City Manager

Cc: David Rapport, City Attorney  
Bob Braitman, Bob Braitman Consulting  
Michael Colantuono, Consulting Attorney  
Tim Eriksen, Director of Public Works/City Engineer  
Charley Stump, Director of Planning & Community Development

**Mendocino  
Local Agency Formation Commission**

200 South School Street Suite F Ukiah CA 95482  
707-463-4470 www.mendolafco.org

**JUSTIFICATION OF PROPOSAL**

Please complete the following information to process an application under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000:  
(Indicate N.A. if Not Applicable)

-----

**SHORT TITLE:** City of Ukiah – Ukiah Valley Sanitation District Detachment Project

**TYPE OF PROPOSAL:** Detachment

**AGENCY CHANGES RESULTING FROM THIS PROPOSAL**

- Agency or Agencies gaining territory:
  
- Agency or Agencies losing territory: Ukiah Valley Sanitation District

**NOTIFICATION**

Please indicate the names, addresses and telephone numbers of all Applicants, Applicant’s Agents, and all affected Agencies who are to receive the hearing notice and the Executive Officer’s Report:

<u>Name</u>	<u>Mailing Address</u>	<u>Telephone</u>	<u>Email</u>
Charley Stump	300 Seminary Avenue, Ukiah, CA 95482	707-463-6219	<a href="mailto:cstump@cityofukiah.com">cstump@cityofukiah.com</a>
David Rapport	405 W Perkins Street, Ukiah, CA 95482	707-462-6846	<a href="mailto:drapport@pacbell.net">drapport@pacbell.net</a>
Tim Eriksen	300 Seminary Avenue, Ukiah, CA 95482	707-463-6280	<a href="mailto:teriksen@cityofukiah.com">teriksen@cityofukiah.com</a>
Jane Chambers	300 seminary Avenue, Ukiah, CA 95482	707-463-621	<a href="mailto:jchambers@cityofukiah.com">jchambers@cityofukiah.com</a>
Bob Braitman	8277 Cheshire Street, Ventura, CA 93004	805-647-7612	<a href="mailto:bob@braitmanconsulting.com">bob@braitmanconsulting.com</a>
Michael Colantuono	11364 Pleasant Valley Road, Penn Valley, CA 95946	530-432-7357	<a href="mailto:mcolantuono@chwlaw.us">mcolantuono@chwlaw.us</a>
Frank McMichael	151 Laws Avenue, Ukiah, CA 95482	707-462-4429	<a href="mailto:dm@uvsd.org">dm@uvsd.org</a>

**PROJECT INFORMATION**

Please provide project-related information for the following questions:

1. Do the proposed boundaries create an island of non-agency territory? [ ] Yes [X] No
2. Do the proposed boundaries split lines of assessment or ownership? [ ] Yes [X] No
3. Does the proposal involve public rights-of-way or easements? [X] Yes [ ] No
4. Does the proposal involve public land or land assessed by the State? [ ] Yes [X] No
5. Does any part of the proposal involve land under a Williamson Act Contract or Farmland Security Zone? [ ] Yes [X] No

6. Does any part of the proposal involve land with a Wildlife/Habitat Easement or Agricultural Land Conservation Easement?  Yes  No

7. List the affected Assessor Parcel Numbers, Owners of Record and Parcel Sizes:

**(See attached list)**

8. Physical Location of Proposal: **(See attached map)**

9. Has an application been filed for an underlying project (such as Development Plan, Conditional Use Permit, or Tentative Subdivision Map)?  Yes  No

If Yes, please attach a Project Site Plan or Tentative Subdivision Map. **N/A**

If No, please provide an estimate of when development will occur: **N/A**

10. List those public services or facilities which will be provided to the affected territory as a result of the proposed action:

**There will no change in existing public services or facilities, but the overlap responsibilities of the Sanitation District and the City (which actually provides the services under contract to the Sanitation District) will be eliminated.**

11. Indicate which of these services or facilities will require main line extensions or facility upgrades in order to serve the affected territory: **N/A**

12. Provide any other justification that will assist the Commission in reviewing the merits of this request.

**The proposed detachment will:**

- Eliminate an unnecessary and confusing overlap of boundaries between the City of Ukiah and the District within the detachment area. None of the properties to be detached from the District receive physical sanitary collection or disposal or billing services from the District. The City provides these services under a Participation Agreement with the District.
- Eliminate existing and potential future conflicts and inconsistencies within City limits between fees and sewer service regulations adopted by the District Board of Directors and the City Council.
- Promote the coordinated provision of urban services by a general law city within its corporate boundaries.
- Avoid imposing unnecessary and duplicative costs of District administration on City residents in the area to be detached.
- Reduce the potential for future conflicts over the payment of more than \$75 Million in bonds ("WWTP bonds") issued to upgrade and expand the City owned wastewater treatment plant.

- Allow property taxes currently allocated to the District within the detachment area and used solely to fund sewer services to be reallocated to support property tax related governmental services such as law enforcement, fire prevention and protection and local parks and recreation to benefit the residents and landowners within the detachment area who are also all City residents and landowners. Funding fee-supported services like sewer collection and disposal services from property taxes is not good public policy as it encourages overconsumption of the service and limited property tax dollars should be devoted to essential services to property which cannot be fee-funded, like police and fire services.

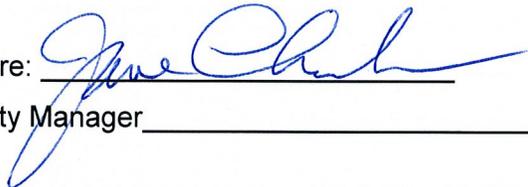
**INDEMNIFICATION AGREEMENT**

As part of this application, applicant and real property in interest, if different, agreed to defend, indemnify, hold harmless, and release the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of the above, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney’s fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, or employees.

Executed at \_\_\_\_\_, California, on the \_\_\_\_ day of \_\_\_\_\_, 2013.

APPLICANT City of Ukiah

REAL PARTY IN INTEREST N/A  
(If different from Applicant)

Signature:   
Title: City Manager \_\_\_\_\_

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

**SUBMITTALS – See the following notations**

In order for this application to be processed, the following information needs to be provided:

1. Two copies of this Justification of Proposal, completed and signed with original signatures; **Enclosed**
2. Five copies of an 11” x 17” proposal map showing the affected territory and its relationship to the City of Ukiah and Ukiah Valley Sanitary District; **Enclosed**
3. Five copies of an 11” x 17” map showing the Ukiah Valley Sanitation District territory within the City of Ukiah City limits. **Enclosed**
4. Three copies of a metes and bounds description of the affected territory; **City will prepare Metes and Bounds maps of each of the blue areas to attach to his Commission’s resolution of approval but that it doesn’t want to spend the large amount of public money to prepare such maps and legal descriptions until the proposal is approved by the Commission.**
5. One certified copy of the City Council and/or Special District Board of Directors Resolution of Application; or a petition making application to LAFCo (as appropriate); **Enclosed**

6. Written permission from each affected property owner (or signature form); **Not provided; we do not have written consent of all property owners. Public hearing is necessary**
7. One copy of the project environmental document (One Compact Disc if more than 25 pages); **This detachment is exempt from CEQA – Class 20 which consists of changes of organization where the change does not change the geographical area in which previously existing powers are exercised.**

**Additionally, CEQA Guidelines Section 15061(b)(3) applies, which is the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that the detachment may have a significant effect on the environment, because it would not disturb, disrupt or affect the physical environment in any way.**

8. One copy of the project Notice of Determination; **N/A**
9. Three 8.5" x 11" copies of the Vicinity Map (if not included on the proposal map); **With regard to the items 10 through 16 below the questions are not applicable to this proposal. There is no proposed change in land use or public service delivery proposed or resulting from this detachment.**
10. One copy of the plan for providing services along with a schematic diagram of water, sewer and storm drainage systems (refer to Government Code Section 56653); **N/A**
11. One copy of the Pre-Zoning map or description (as required by Section 56375); **N/A**
12. One copy of the Statement of Open Space (Ag) Land Conversion (refer to Section 56377); **N/A**
13. One Copy of the Statement of Timely Availability of Water Supplies (refer to Section 56668(k)); **N/A**
14. One copy of the Statement of Fair Share Housing Needs (if residential land uses are included in the proposal) (refer to Section 56668(l)); **N/A**
15. One copy of the project design (site plan, development plan, or subdivision map); **N/A**
16. One copy of the Residential Entitlement matrix form (if residential land uses are included in the proposal); and **N/A**
17. Filing and processing fees in accordance with the LAFCo Fee Schedule and the State Board of Equalization Fee Schedule. **Enclosed (LAFCo Fee).**

#### **CERTIFICATION**

The undersigned hereby certifies that all LAFCo filing requirements will be met and that the statements made in this application are complete and accurate to the best of my knowledge.

  
 \_\_\_\_\_  
 (Signature)

Date: 11/18/14

Print or Type Name: Jane Chambers

Daytime Telephone: (707) 463-6200

RESOLUTION NO. 2014-43

**RESOLUTION OF APPLICATION OF THE CITY COUNCIL OF THE CITY OF UKIAH INITIATING PROCEEDINGS FOR A DETACHMENT FROM THE UKIAH VALLEY SANITATION DISTRICT (CITY AREA DETACHMENT)**

**WHEREAS:**

1. Statutes promote the establishment of local governmental boundaries that are logical, orderly and related to services provided by each local government; and
2. Parcels should be included within local agencies only when they will receive services that benefit those parcels; and
3. Registered voters should be included within local governments only when they receive services of benefit to those voters since to do otherwise diminishes the electoral influence and voting power of registered voters who do receive services from those local governments, and
4. The City of Ukiah desires to initiate a proceeding for the adjustment of boundaries as specified herein;

**NOW, THEREFORE,** the City Council does hereby resolve and order as follows:

1. This proposal is made, and it is requested that proceedings be taken, pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000, commencing with section 56000 of the California Government Code.
2. This proposal is a detachment from the Ukiah Valley Sanitation District (hereafter "District").
3. A map of the affected territory is set forth in Exhibit A, attached hereto and by reference incorporated herein.
4. It is desired that the proposal be subject to the following terms and conditions to be imposed by the Local Agency Formation Commission pursuant to Government Code section 56886:
  - A. **Transfer of real property** –Transfer to the City of all easements and other interests in real property currently held by the District within the detachment area that are part of its collection system serving the detachment area.
  - B. **Transfer of physical assets** - Transfer to the City all physical assets comprising the District's waste collection system within the detachment area.
  - C. **Sharing facilities and costs** – d
    - (1) After the detachment is completed, the City and District shall continue to share infrastructure and costs required to collect and treat wastewater originating in the District and the City in accordance with the existing Participation Agreement, dated July 19, 1995, as amended on March 24, 1999 ("Amendment No. 1") and December 15, 2004 ("Amendment No. 2"), between the City and the District and on file in the office of the City Clerk of the City. As provided in recital 7 of Amendment No. 2, in 2006 the City

commenced construction of a \$75,060,000 project to reconstruct the wastewater treatment plant that services the District and the City. ("WWTP Project.") The WWTP Project consisted of two related projects; a "Capacity Project" to increase the capacity of the plant and an "Upgrade/Rehabilitation Project." The Capacity Project accounted for approximately 32% of the project cost. On March 1, 2006, the Association of Bay Area Governments ("ABAG") issued 2006 Water and Wastewater Revenue Bonds, Series A ("WWTP Bonds") pursuant to an Installment Sale Agreement between the City and ABAG, dated March 1, 2006 and on file with the City Clerk of the City. To assure the repayment of the WWTP Bonds the City and the District entered a Financing Agreement, dated March 2, 2006 and on file with the City Clerk of the City. Under the Financing Agreement the District is required to pay a portion of the debt service on the WWTP Bond as follows: (1) Capacity Project – 65%; (2) Upgrade/Rehabilitation Project – in the same percentage as for its share of operational costs pursuant to Section 1 of the Participation Agreement.

- (2) Except as provided in subsection (3), below, the District shall continue to pay its share of the debt service on the WWTP bonds for the Upgrade/Rehabilitation Project in accordance with the Financing Agreement. That percentage has been 53% City, 47% District, but the percentage for the District will decrease and the percentage for the City will increase substantially when the detachment area is removed from the District. Those revised percentages shall be submitted by the City Engineer to LAFCO prior final decision on the approval of the detachment.
  - (3) The District's proportionate share of the Capacity Project was fixed initially at 65% of the debt service for the WWTP bonds. That percentage shall be modified from the current 65% to a fraction in which the denominator is 2400 Equivalent Sewer Service Units ("ESSUs"), as defined in Section 1 of the Participation Agreement, which is the number of ESSUs resulting from the Capacity Project, and in which the numerator is the number of those ESSUs already assigned to the District as a result of new connections within the portion of the District outside the detachment area plus the number of ESSUs required by the District to satisfy the demand for new connections in the reduced District territory and in the District's sphere of influence. [More specific details to be developed prior to acceptance of application by Executive Officer.]
- D. **Transfer of monetary assets** – Upon completion of the detachment, a proportionate share of District's monetary assets, including cash on hand, and all reserve funds, including the rate stabilization fund, shall be transferred to the City. The proportion attributable to the detachment area is determined by multiplying all of these funds by a fraction the denominator of which is the total revenue received by the District in the five full fiscal years for which the City has audited financial statements prior the effective date of the detachment, as disclosed in the City's audited financial statements, and the numerator of which is the amount of such revenue from the area detached from the District. [Details and more specific requirements to be completed to acceptance of the application by the Executive Officer.]
- E. **Change in property tax allocation factors** – For the fiscal year following completion of the detachment, and in subsequent fiscal years, the property tax apportionment factors allocated to the District within the detachment area shall be reapportioned to the City pursuant to the agreement between the City and the Mendocino County Board of Supervisors, dated [date] pursuant to section 99 of the California Revenue and Taxation Code.

F. **Appropriations limit** – Coincident with the detachment, the District's Gann limit shall be reduced to \$\_\_\_\_\_ and the City's Gann limit shall be increased by that amount to reflect property tax reapportioned from the District to the City pursuant to the agreement between the City and the District dated [date] pursuant to section 99 of the California Revenue and Taxation Code. [Details to be included prior to acceptance of application by LAFCO Executive Officer.]

5. Reasons for the proposal are to:

- A. Eliminate an unnecessary and confusing overlap of boundaries between the City of Ukiah and the District. None of the properties to be detached from the District receive physical sanitary collection or disposal or billing services from the District. The City already provides all of these services within the detachment area under a Participation Agreement between the City and the District.
- B. Eliminate existing and potential conflicts and inconsistencies within City limits between fees and sewer service regulations adopted by the District Board of Directors and the City Council.
- C. Promote the coordinated provision of urban services by a general law city within its corporate boundaries.
- D. Avoid imposing current and potentially future unnecessary and duplicative costs of District administration on residents and property owners within the area to be detached.
- E. Reduce the potential for future conflicts over the payment of the Wastewater Treatment Plant bonds.

6. It is requested that the District Sphere of Influence be modified to exclude the territory being detached from the District.

**PASSED AND ADOPTED** by the City Council of the City of Ukiah on November 5, 2014, by the following roll call vote:

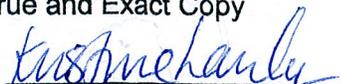
AYES: Councilmembers Scalmanini, Crane, Thomas, Landis, and Mayor Baldwin  
NOES: None  
ABSTAIN: None  
ABSENT: None

  
Philip E. Baldwin, Mayor

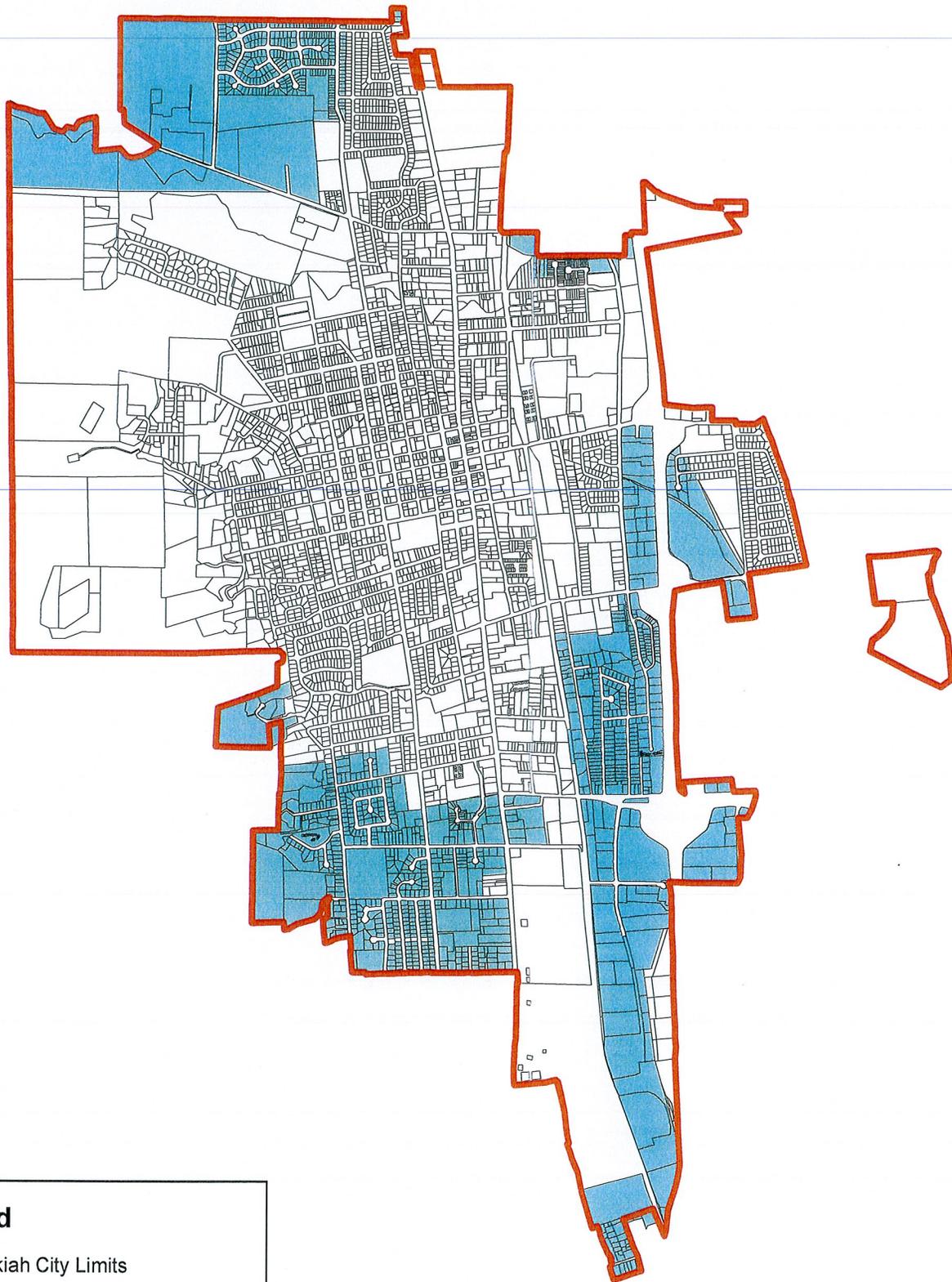
ATTEST:

  
Kristine Lawler, City Clerk

City of Ukiah, California  
Certified to be a  
True and Exact Copy

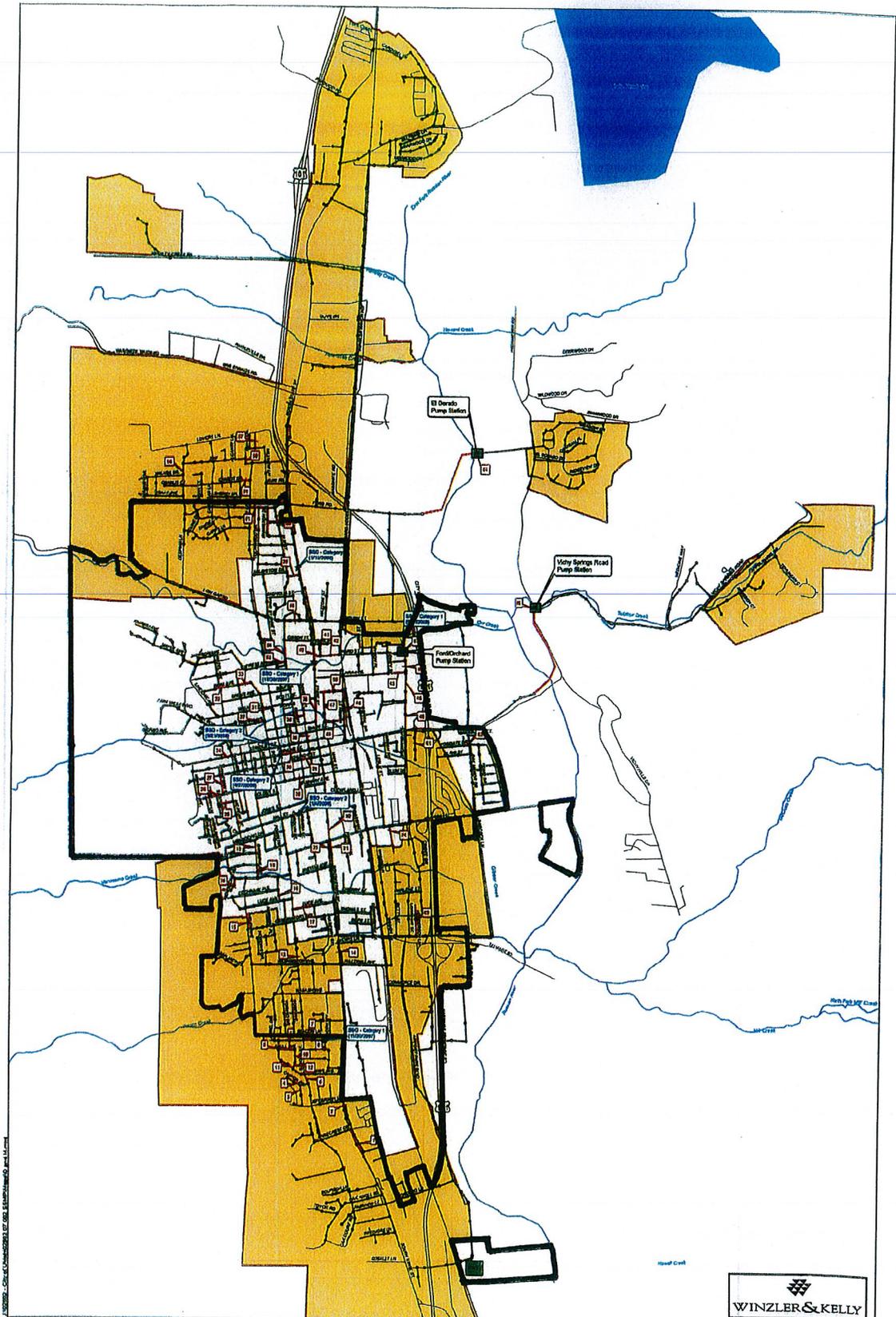
11/7/14   
Date Kristine Lawler, City Clerk

# UVSD Parcels within Ukiah City Limits



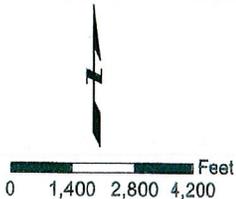
**Legend**

-  Ukiah City Limits
-  UVSD Parcels in City of Ukiah



**Legend**

- ★ Sanitary Sewer Overflow (SSO)
- Sanitary Sewer Manholes
- Sewer Maintenance
- Sanitary Sewer Gravity Pipe
- Sanitary Sewer Force Main
- Streets
- Rivers and Streams
- Sanitary Sewer Pump Stations
- Sanitary Sewer Treatment Plant
- Ukiah City Limits
- Ukiah Valley Sanitation District



**City of Ukiah/Ukiah Valley Sanitation District  
Operation and Maintenance  
Sanitary Sewer Basemap**

Sewer System Management Plan  
Mendocino County, California




02502-07-002  
April 2009

# EXHIBIT C



April 29, 2020

Uma Hinman  
Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
*Sent via email: eo@mendolafco.org*

Subject: City of Ukiah's Amended Proposal for Detachment from Ukiah Valley Sanitation District

Dear Ms. Hinman,

I hope this finds you well.

On November 18, 2014, the City of Ukiah provided several documents in support of its proposal to detach certain areas described as the "Overlap Area" from the Ukiah Valley Sanitation District.

Documents provided in support of that Proposal included:

- A certified copy of the City Council of the City of Ukiah Resolution of Application adopted on November 5, 2014;
- Five copies of an 11" x 17" proposal map showing the affected territory and its relationship to the City of Ukiah and Ukiah Valley Sanitation District;
- Five copies of an 11" x 17" map showing the Ukiah Valley Sanitation District territory within the City of Ukiah city limits;
- A processing fee of \$4,000.00 in accordance with the Mendocino LAFCo Fee Schedule; and
- A list of the parcels affected by the Proposal, including the APNs, site addresses, owner's names, and owner's mailing addresses.

Missing from the Proposal was what we now attach: the Plan for Services.

This letter, the attached Plan for Services with supporting documents, the attached amended and restated Justification of Proposal (the prior Justification of Proposal, excepting previously-provided information as submittals in support of that prior Justification of Proposal, is hereby annulled and withdrawn), and the previously-provided documents in support of the Proposal, provide Mendocino LAFCo with the information it needs to approve this application for detachment and provide for efficient and streamlined municipal services to residents of Ukiah. Our Proposal does not include nor will it result in any changes to land use, public services, or environmental impacts.

Our Proposal will result in Ukiah continuing to provide the same sewer services to all of Ukiah's residents – both those in the Overlap Area and those in the rest of our city – as it has for over sixty years, while eliminating redundant administrative costs which are merely a historical artifact of a bygone era. Our proposal will result in the streamlining and coordination of municipal services and in elevated transparency and accountability to Ukiah residents. It will ensure a more durable wastewater collection system and increase efficiencies for that system. And, importantly, it does not disproportionately negatively affect the financial strength or viability of the Ukiah Valley Sanitation District, a special district upon which so many of our neighbors outside Ukiah's city limits rely.

By providing these documents, we understand our Proposal is complete, ready for your approval, and that the next step is for Mendocino County and Ukiah to negotiate a tax sharing agreement in accordance with California Revenue and Tax Code section 99. If you believe any additional information is required for you to determine that our Proposal is complete for processing, or if you have any questions, please contact Philip Williams, Special Counsel, at [pwilliams@wellyweaver.com](mailto:pwilliams@wellyweaver.com).

We look forward to working with you and your staff in securing a bright future for all of Ukiah. Thank you for your consideration and your service to our community.

Sincerely Yours,



Sage Sangiacomo  
City Manager

CC: Hon. Douglas Crane, Mayor  
Hon. Juan Orozco, Vice Mayor  
Hon. Jim Brown  
Hon. Maureen Mulheren  
Hon. Steve Scalmanini  
David Rapport, City Attorney  
Shannon Riley, Deputy City Manager  
Dan Buffalo, Finance Director  
Tim Eriksen, Director of Public Works and City Engineer  
Craig Schlatter, Director of Community Development  
Sean White, Director of Sewer and Water  
Philip Williams, Special Counsel  
David Redding, General Manager, Ukiah Valley Sanitation District

# EXHIBIT C1

**Mendocino**  
**Local Agency Formation Commission**  
 200 South School Street, Ukiah CA 95482  
 707-463-4470 www.mendolafco.org

**JUSTIFICATION OF PROPOSAL**

Please complete the following information to process an application under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (indicate N/A if Not Applicable)

**SHORT TITLE OF THE PROPOSAL:** City of Ukiah – Ukiah Valley Sanitation District Detachment

**TYPE OF PROPOSAL**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> City Incorporation    | <input type="checkbox"/> Sphere of Influence Amendment                              | <input type="checkbox"/> District Formation   |
| <input type="checkbox"/> Annexation            | <input type="checkbox"/> Sphere of Influence Update                                 | <input type="checkbox"/> District Dissolution |
| <input checked="" type="checkbox"/> Detachment | <input type="checkbox"/> Out-of-Agency Service                                      | <input type="checkbox"/> Consolidation        |
| <input type="checkbox"/> Add Latent Power      | <input type="checkbox"/> Reorganization (involving an Annexation and Detachment(s)) |   |

**AGENCY CHANGES RESULTING FROM THIS PROPOSAL**

Agency or Agencies gaining territory: **(The Territory proposed is already within Ukiah’s City Limits)**  
 Agency or Agencies losing territory: **Ukiah Valley Sanitation District**

**NOTIFICATION**

Please indicate the names, addresses and telephone numbers of all Applicants, Applicant’s Agents, and all affected Agencies who are to receive the hearing notice and the Executive Officer’s Report:

Name	Mailing Address	Telephone/Email Address
<u>Sage Sangiacomo</u>	<u>300 Seminary Ave., Ukiah, CA 95482</u>	<u>707.463.6221; ssangiacomo@cityofukiah.com</u>
<u>David Rapport</u>	<u>405 Perkins St. Ukiah, CA 95482</u>	<u>707.462.6846; drapport@cityofukiah.com</u>
<u>Sean White</u>	<u>300 Seminary Ave., Ukiah, CA 95482</u>	<u>707.467.5712; swhite@cityofukiah.com</u>
<u>Philip Williams</u>	<u>141 North St., Ste A, Healdsburg, CA 95448</u>	<u>707.433.4842; pwilliams@welyweaver.com</u>
<u>David Redding</u>	<u>151 Laws Ave., Ukiah, CA 95482</u>	<u>707. 462.2666; dredding@willowc wd.org</u>

(Attach a separate sheet if necessary.)

**PROJECT INFORMATION**

Please provide project-related information for the following questions:

1. Do the proposed boundaries create an island of non-agency territory?     [ ] Yes [ X ] No
2. Do the proposed boundaries split lines of assessment or ownership?     [ ] Yes [ X ] No
3. Does the proposal involve public rights-of-way or easements?           [ X ] Yes [ ] No
4. Does the proposal involve public land or land assessed by the State?     [ ] Yes [ X ] No
5. Does any part of the proposal involve land under a Williamson Act Contract or Farmland Security Zone?     [ ] Yes [ X ] No
6. Does any part of the proposal involve land with a Wildlife/Habitat Easement or Agricultural Land Conservation Easement?     [ ] Yes [ X ] No

List the affected Assessor Parcel Numbers, Owners of Record and Parcel Sizes (attach separate sheet if necessary): **(Please see previously-provided list)**

Assessor's Parcel Number (APN)	Owner of Record	Parcel Size (Acres)

7. Physical Location of Proposal: **(Please see previously-provided map.)**

(Street/Road, distance from and name of Cross Street, quadrant of City)

8. Has an application been filed for an underlying project (such as Development Plan, Conditional Use Permit, or Tentative Subdivision Map)?                             [ ] Yes [ X ] No

If Yes, please attach a Project Site Plan or Tentative Subdivision Map.

If No, please provide an estimate of when development will occur: **Not applicable.**

9. List those public services or facilities which will be provided to the affected territory as a result of the proposed action:

**There will be no change in existing public services or facilities, but the overlap responsibilities of the Sanitation District and the City of Ukiah (the latter of which provides the services under contract with Sanitation District) will be eliminated.**

10. Indicate which of these services or facilities will require main line extensions or facility up-grades in order to serve the affected territory: **Not applicable.**

11. Has the affected agency negotiated a tax share agreement or made a determination that the proposal is revenue neutral (Section 99 of the California Revenue & Taxation Code)? Please include documentation or explanation.

**The Overlap Area is already a part of Ukiah. The City of Ukiah understands that, in accordance with Revenue & Tax Code section 99(b), once the application is filed with LAFCo, the Executive Officer transmits that application to the County Assessor and the**

County Auditor. Those officials are then to provide information about the allocation to local governments of property tax revenues generated in the affected area, in our case the Overlap Area. The County Auditor is then to notify “each local agency whose service area or service responsibility will be altered” (i.e, the City of Ukiah and the Sanitation District) of the property tax revenue “that is subject to a negotiated exchange.” (Rev. & Tax Code, § 99 (b)(3).) Then, the County “shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies.” (*Id.*, § 99 (b)(4). Our understanding based on recent prior practice of the County regarding detachments is that this is a largely routine exercise of identifying the affected parcels and their associated property taxes, and then simply allocating those property taxes according to the proposed detachment and resulting changes in jurisdictions.

12. Provide any other justification that will assist the Commission in reviewing the merits of this request. (Attach separate sheets as necessary.)

Please see the attached Plan of Services and other supporting documents provided as part of Ukiah’s application. In addition, the proposed detachment will:

- Eliminate a redundant overlap of boundaries between Ukiah and the Sanitation District within the Overlap Area.
- Result in Ukiah providing the same sewer services to its residents, as none of the properties to be detached from the Sanitation District receive physical sewer collection, sewer disposal, or billing services from the Sanitation District, as the City provides these services under an agreement with the Sanitation District.
- Eliminate existing and potential future conflicts and inconsistencies within Ukiah’s city limits between fees and sewer service regulations adopted the City Council and those adopted by the Sanitation District Board of Directors.
- Promote the coordinated provision of municipal services by a general law city within its boundaries.
- Avoid imposing unnecessary and duplicative costs of Sanitation District administration on City residents in the Overlap Area.
- Reduce the potential for future conflicts over the payment of more than \$75 million in bonds issued to upgrade and expand the City-owned wastewater treatment plant.
- Allow property taxes currently allocated to the Sanitation District within the Overlap Area and which are used solely to fund sewer services to be reallocated to support property tax-related governmental services such as law enforcement, fire prevention and protection, and local parks and recreation to benefit the residents and landowners within the Overlap Area. Funding fee-supported services like sewer collection and disposal services from property taxes is not good public policy as it encourages overconsumption of the service; limited property tax dollars should be devoted to essential services to property, which cannot be funded by fees, like fire and police services.

## SUBMITTALS

In order for this application to be processed, the following information needs to be provided:

- Two copies of this Justification of Proposal, completed and signed with original signature(s)  
**Previously provided.**
- Agreement to Pay form, completed and signed with original signature(s)  
**Previously provided.**
- Five prints of a full-scale proposal map showing the affected territory and its relationship to the affected jurisdiction (and prepared to State Board of Equalization specifications) – include an electronic version if available
- Five copies of an 8.5” x 11” or 11” x 17” reduction of the proposal map, include an electronic version if available  
**Previously provided.**
- Three copies of a metes and bounds description of the affected territory, include an electronic version if available  
**Ukiah will prepare Metes and Bounds maps of each of the appropriate areas to be attached to the Commission’s Resolution of Approval. At this time, it does not want to spend the large amounts of public money to prepare such maps and legal descriptions until the Proposal is approved by the Commission.**
- One certified copy of the City Council and/or Special District Board of Directors Resolution of Application; or a petition making application to LAFCo (as appropriate)  
**Previously provided.**
- Written permission from each affected property owner (or signature form)  
**Not available; a public hearing will be necessary.**
- One copy of the project environmental document (One Compact Disc if more than 25 pages)  
**The proposed detachment of the Overlap Area is exempt from the California Environmental Quality Act in accordance with the general rule found in CEQA Guidelines section 15061, subd. (b)(3) which states that CEQA only applies to projects which have the potential for causing a significant effect on the environment. In addition, the proposed detachment is exempt under: the Existing Facilities exemption found in 14 C.C.R. § 15301; the Changes in Organization of Local Agencies exemption found in 14 C.C.R. § 15320; and the Ongoing Project exemption found in 14 C.C.R. §15261.**
- One copy of the project Notice of Determination  
**Not applicable as the proposed detachment is exempt from CEQA.**
- Three 8.5” x 11” copies of the Vicinity Map (if not included on the proposal map)  
**Previously provided.**
- One copy of the plan for providing services along with a schematic diagram of water, sewer and storm drainage systems (refer to Government Code Section 56653)
- One copy of the Tax Share Agreement  
**As stated above, and in accordance with Revenue and Tax Code section 99 and prior practice, Ukiah understands that, once the application has been filed with LAFCo, the executive director is to contact the County to perform the analyses and any resulting negotiations with Ukiah for the appropriate sharing of affected property taxes.**

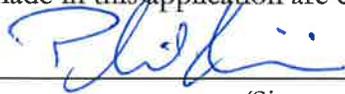
**The following six items are not applicable to this proposed detachment as there is no proposed change in land use or public service delivery proposed or resulting from this proposed detachment.**

- One copy of the Pre-Zoning map or description (as required by Section 56375)
- One copy of the Statement of Open Space (Ag) Land Conversion (refer to Section 56377)
- One Copy of the Statement of Timely Availability of Water Supplies (refer to Section 56668(l))
- One copy of the Statement of Fair Share Housing Needs (if residential land uses are included in the proposal) (refer to Section 56668(m))
- One copy of the project design (site plan, development plan, or subdivision map)
- One copy of the Residential Entitlement matrix form (if residential land uses are included in the proposal)
  
- Filing and processing fees in accordance with the LAFCo Fee Schedule and the State Board of Equalization Fee Schedule.  
**Previously provided.**

Note: Additional information may be required during staff review of the proposal.

**CERTIFICATION**

The undersigned hereby certifies that all LAFCo filing requirements will be met and that the statements made in this application are complete and accurate to the best of my knowledge.

  
 \_\_\_\_\_  
 (Signature)

April 29, 2020  
 \_\_\_\_\_  
 (Date)  
*Originaly Signed PAW*  
 Daytime Telephone: (707) 723-4297  
 Email: pwilliams@wellyweaver.com

Print or Type Name: **Philip A. Williams**

# EXHIBIT D

### **Plan for Providing Services**

The City of Ukiah (“Ukiah”) proposes to detach from the Ukiah Valley Sanitation District that portion of the Ukiah Valley Sanitation District (the “District”) that is located within Ukiah’s city limits (the “Proposal”). The area Ukiah proposes to detach is referred to as the Overlap Area because it lies within both Ukiah’s and the District’s boundaries.

As originally conceived in 1955, the District was created to provide the means for Ukiah to provide sewer service to some areas located in unincorporated areas of the County. In recent years the District has pursued increased independence from Ukiah. A result has been two separate entities – Ukiah and the District – with service obligations and regulatory authority regarding sewer service within Ukiah: Ukiah provides sewer services directly to one portion of Ukiah and provides those exact same services indirectly through the District to another portion of Ukiah.

Should Mendocino LAFCo approve Ukiah’s Proposal, Ukiah will continue to provide the same sewer services to all of Ukiah – both in the Overlap Area and in the rest of Ukiah – as it has for over sixty years.

#### **1. Enumerate and describe the services to be extended to the affected territory.**

In addition to providing the full suite of municipal services it already provides to its residents, through detachment of the Overlap Area, Ukiah and the five elected members of the City Council will make all decisions about the provision of sewer services throughout the entire city, including decisions about rates and improving facilities and services. Consolidating jurisdiction for sewer services with Ukiah will facilitate thoughtful coordination of all utility services, including water, electricity, and road maintenance and repair, all of which implicate public rights of way in Ukiah and all of which in one way or another implicate the other.

Under the Operating Agreement entered into by Ukiah and the District in 2018,<sup>1</sup> the District provides some sewer services within the Overlap Area. Under the Operating Agreement, Ukiah treats wastewater through its wastewater treatment plant and through the operation, maintenance, and repair of the District’s waste collection system, including, sewer mains and lift stations. Under the Operating Agreement, Ukiah also provides billing and collection services for the District. The District sets sewer rates for those residents within its jurisdiction, including those in the Overlap Area, and regulates the discharge of sewer within the Overlap Area.

*Detachment will reduce redundant administrative costs and streamline services.*

Under the Operating Agreement, Ukiah and the District have the options to require the District to provide its own billing and collection services and for the District to provide for the operation, maintenance, and repair of the District’s portion of the wastewater collection system. The District has notified Ukiah that it intends to assume its own billing and collections beginning in July 2020.

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<sup>1</sup> The “Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah” Dated October 3, 2018 (attached and incorporated hereto as Exhibit A-1).

When that happens, and absent approval of Ukiah's Proposal, Ukiah residents in the Overlap Area who now receive one consolidated bill from Ukiah for water, electric, sewer, and solid waste collections services will begin to receive a separate bill for sewer service from the District, will have to make a separate payment to the District for sewer service, and will potentially have to deal with separate entities regarding questions about billing or services – this despite the fact that they are within Ukiah's City Limits.

If Mendocino LAFCo approves Ukiah's Proposal, Ukiah will continue to provide wastewater treatment through its wastewater treatment plant. Ukiah will continue to permanently operate, maintain, and repair the wastewater collection system serving the Overlap Area. If the Overlap Area is detached, Ukiah will take over the ownership, operation, maintenance, repair, and replacement of the portion of the wastewater collection system serving the Overlap Area by a transfer of that system to Ukiah. Upon detachment, Ukiah will extend its rate setting provisions and sewer regulations to the Overlap Area, thereby establishing one set of rules for all of Ukiah's residents. Upon detachment, the District will no longer assume the operation of a wastewater collection system that serves Ukiah's residents in the Overlap Area, and the District will no longer be responsible for capital improvements to the wastewater collection system in the Overlap Area.

Additional considerations in support of detachment include:

- Ukiah already owns the streets, rights-of-way, and/ or easements within which the District's portion of the wastewater collection system inside the Overlap Area is located. Therefore, Ukiah will immediately, and without further action, be able to service that portion of the wastewater collection system.
- To ensure the future durability and serviceability of sewer facilities, Ukiah respectfully requests LAFCo to order transfer of those facilities identified in Exhibit A-2.<sup>2</sup> Ukiah shall be responsible for future maintenance, repair, and replacement of these transferred facilities.
- As mentioned above, Ukiah will extend City rate setting to the Overlap Area, which will include individualized rate setting determinations for commercial and industrial users in accordance with the California Constitution and other provisions of law. Rate setting will also include connection fees which are revised under Ukiah City Code sections.
- Ukiah will extend regulation of sewer discharge through the application of Division 4, Chapter 2 of the Ukiah City Code, commencing with Section 3700, and which will include:
  - Regulating and inspecting grease traps by non-residential facilities generating fats, oils, or greases as a result of food manufacturing, processing or preparation, such as restaurants, hospitals, hotels and motels, nursing homes, food manufacturers, and food processors.
  - Permitting and inspecting the construction, maintenance, repair, and replacement of sewer laterals, including City subsidies to property owners required to replace sewer laterals not meeting City standards.

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<sup>2</sup> Specifically, but without limitation, those facilities in Exhibit A-2 identified within the Ukiah Valley Sanitation District's boundaries and Ukiah's City Limits as Sewer Maintenance, Sanitary Sewer Gravity Pipe, Sanitary Sewer Force Main, and Sanitary Sewer Pump Stations.

- Imposing and enforcing requirements that all sewer is discharged to the public sewer system and that discharges meet specified standards including applicable state and federal environmental laws.
- When and if needed, Ukiah will construct and connect a new trunk sewer to serve the City and extend that trunk sewer to the Overlap Area.

## **2. The level and range of those services.**

*Detaching the Overlap Area will accomplish important efficiencies.*

The level and range of sewer services provided by Ukiah upon detachment will be equivalent to the level and range of such services currently provided by the District under its contract with Ukiah. The change will be purely administrative and will therefore be completely invisible to the residents of Ukiah in terms of the provision of sewer services. These services will remain precisely the same because, as it has for decades, Ukiah already provides the full suite of sewer services to those residents in the Overlap Area.

The only meaningful difference for the Ukiah residents in the Overlap Area is that they will no longer be paying the District for services performed by Ukiah and they will only have to deal with one local government agency – Ukiah – regarding the full range of municipal services, including sewer. The only meaningful difference for those Ukiah residents not in the Overlap Area is that they will no longer be burdened with the additional expenses Ukiah incurs because of the current arrangement.

*Detaching the Overlap Area will assure the durability of sewer services.*

Detaching the Overlap Area will assure the durability of public services for Ukiah's residents for decades to come. For example, in an effort to achieve its desired debt ratio for the current refinancing of the wastewater treatment plant, the District has deferred certain capital improvements for its share of the sewer system facilities and used significant revenues to pay down its debt obligations. In its own refinancing efforts, Ukiah achieved its desired debt ratio while still meeting its obligations to maintain its facilities and to make the necessary capital improvements to those facilities, thus ensuring the durability of sewer service facilities within Ukiah.

*Detaching the Overlap Area will advance important democratic values.*

In addition to increasing efficiencies, detaching the Overlap Area will advance other important democratic values. Transparency and accountability to Ukiah's residents regarding sewer services will improve as information about Ukiah and its operation and regulation of sewage is readily available through Ukiah's website. Detaching the Overlap Area will create a single forum for Ukiah's residents to understand and to affect how sewer services are provided to them. City Council meetings are digitally recorded and available on Ukiah's website and are easily searchable. Video recordings are available from 2010 to the present. Ukiah's budget and its budget-related documents are posted on Ukiah's website. Agenda Summary Reports and attached documents for each agenda item for each City Council meeting are available on Ukiah's website

going back to 2010. City Council meetings are broadcast live on public access television. Regulations that affect rate setting and sewer services, as an example, will be uniformly apparent to Ukiah's residents and responsive to their concerns.

*Detaching the Overlap Area will reduce waste and redundancy.*

As mentioned above, through detachment, Ukiah's regulation of the sewer system will be coordinated through uniform adoption and enforcement of regulations. Ukiah has full-time staff assigned to administer its sewer regulations, and these services can be coordinated with other City departments such as planning and building services. The City Council will have the ability to budget capital improvements for the wastewater collection system serving the entire City. Through detachment, these capital improvements can be coordinated with road repair and reconstruction, and when streets are scheduled for resurfacing Ukiah can schedule to replace underground utilities within that right of way. The ability to coordinate these efforts will not only reduce costs, but will also avoid unnecessarily disturbing our residents by coordinating repairs and improvements.

**3. Indicate when those services can feasibly be extended to the affected territory.**

Immediately upon recordation of the detachment: Ukiah will assume not only operation, maintenance, and repair of sewer system facilities, but also the obligation to replace these facilities when they require replacement; and Ukiah will provide uniform rate setting and regulatory services.

Transfer of District waste collection facilities, including the sewer mains and lift stations, can be completed within thirty days after LAFCO approves this detachment and orders the facilities transferred.

**4. An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.**

Although not required or planned for at this time, a new trunk sewer, when and if needed and developed, will increase the efficiency of the sewer system's ability to transport sewage for treatment. Any new trunk sewer will be available to both Ukiah and the District.

**5. Information with respect to how those services will be financed.**

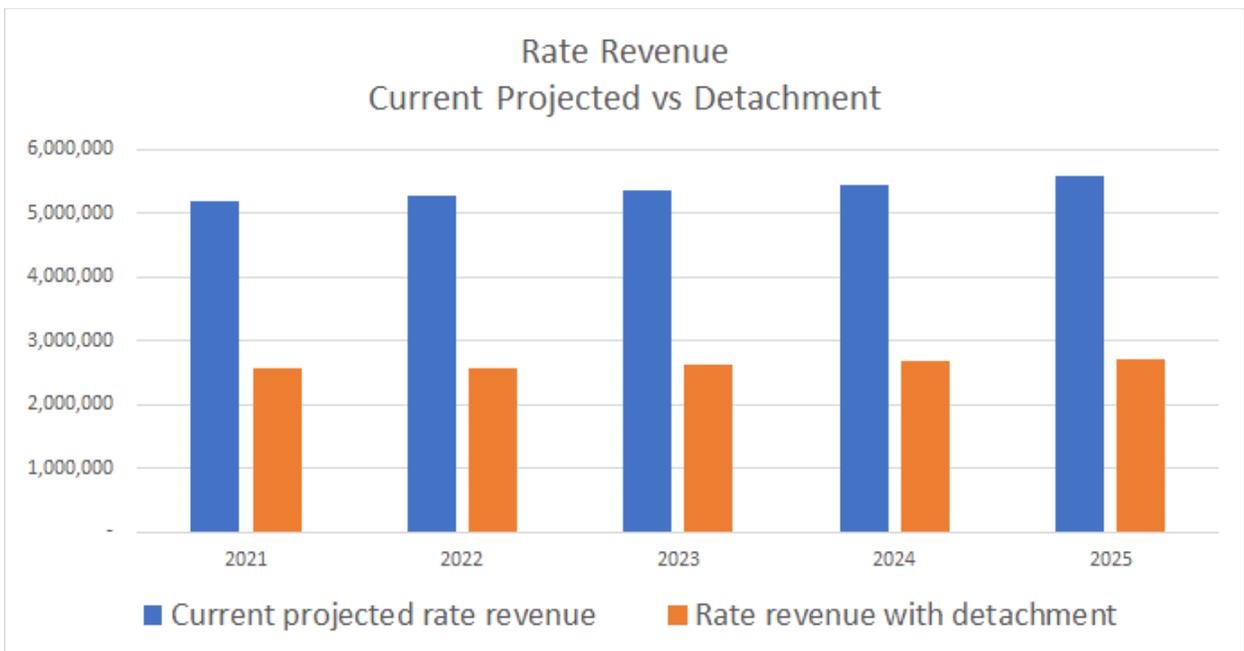
**a. *Detachment will result in a proportionate decrease in District revenue.***

Sewer services are financed by a combination of rate revenue and connection fees. In addition, fees are collected for various required sewer-related permits. The District also collects ad valorem and special property taxes (discussed later in this section). The District's annual revenue from rates alone was \$5,165,230 in fiscal year 2019 and is estimated to be \$5,191,171 in fiscal year 2021. Rate revenue from parcels in the area proposed for detachment from the District is approximately

\$2,626,733<sup>3</sup>. Detachment will transfer from the District to Ukiah monthly rate revenue, connection fees, and permit fees charged for sewer service to the parcels in the detachment area. After detachment, the District’s annual revenue from rates would be reduced to \$2,564,438 (\$5,191,171-\$2,626,733), a 50.6 percent decrease in 2021<sup>4</sup>.

**RATE REVENUE - DISTRICT**

	2021	2022	2023	2024	2025
Current projected rate revenue	5,191,171	5,271,708	5,353,496	5,436,552	5,575,262
Rate revenue with detachment	2,564,438	2,578,580	2,623,956	2,670,036	2,716,831
Reduction	50.60%	51.09%	50.99%	50.89%	51.27%



**b. Detachment should not negatively affect the District’s ability to pay allocated expenses or to service its debt.**

The Operating Agreement addresses in general terms how to adjust the allocation of operating expenditures between Ukiah and the District in the event the Overlap Area is detached from the District. Shared expenditures are allocated under an allocation methodology which measures the sewer usage of each connection using the water use and relative strength of sewage discharge for each type of connection (residential, commercial, or industrial). The allocation methodology was developed by a consultant which was mutually selected, agreed to, and contracted by both agencies. The allocation methodology is termed “The Hildebrand Method.”

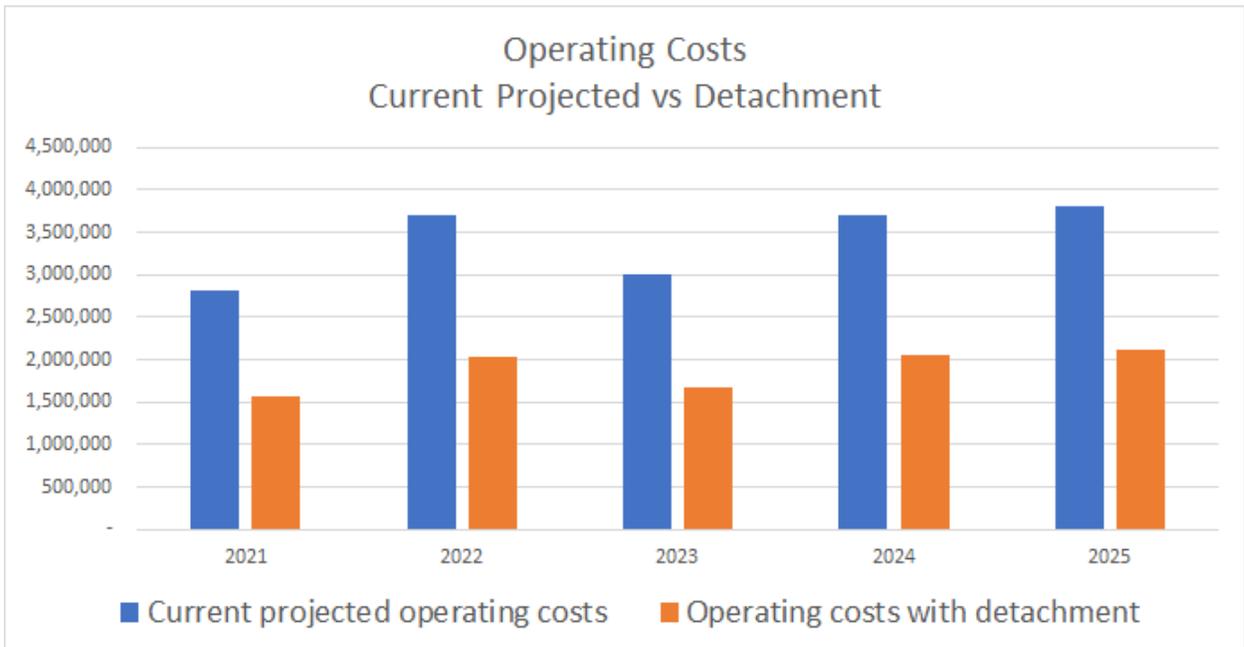
<sup>3</sup> Source: City and district audited financial statements and City billing records.

<sup>4</sup> Estimations derived from the City of Ukiah and Ukiah Valley Sanitation District 2020 Joint Sewer Rate Study.

In the Hildebrand Method, expenditures are allocated in proportion to the sewer usage by connections in the District and Ukiah. When the Overlap Area is detached from the District, the proportionate use of connections in the Overlap Area will be transferred from the District to Ukiah. The District’s share of the shared expenditures will be reduced, and Ukiah’s share increased by a commensurate amount. When compared to the decrease in revenue, the decrease in operating costs would be less (e.g. in 2021 revenue decrease would be 50.6 percent while cost decreases would be 44.63 percent). This is expected, as rate structures for sewer utilities are designed to generate more revenues than operating costs for purposes of debt service, capital outlay, and to build reserves for economic uncertainty (e.g. rate stabilization funds).

**OPERATING COSTS - DISTRICT**

	2021	2022	2023	2024	2025
Current projected operating costs	2,824,776	3,695,437	3,000,693	3,704,631	3,815,135
Operating costs with detachment	1,564,000	2,037,189	1,665,561	2,049,078	2,112,442
Reduction	44.63%	44.87%	44.49%	44.69%	44.63%



In accordance with the February 24, 2020, City-District 2020 Refinancing Agreement (the “2020 Refinancing Agreement”)<sup>5</sup> debt service is apportioned in a similar way. Based on the Hildebrand Methodology, the District separately refinanced 54 percent of the total outstanding balance on the bonds issued to rehabilitate and increase the capacity of the wastewater treatment plant and Ukiah refinanced 46 percent. There are two components of the total debt: the first is

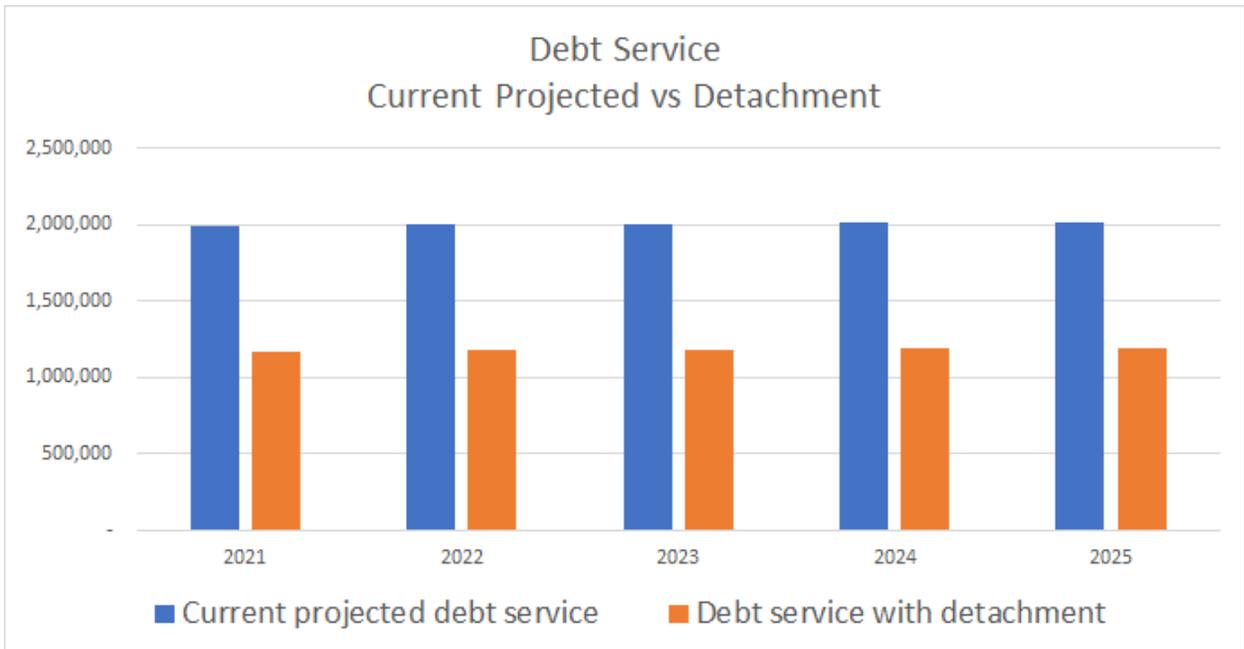
<sup>5</sup> The “City-District 2020 Refinancing Agreement, Dated as of February 24, 2020, By and Between City the Ukiah and Ukiah Valley Sanitation District Relating to the \$25,010,000 City of Ukiah Series Wastewater Revenue Refunding Obligations (2020 Wastewater Refunding Project) and the \$25,005,000 Ukiah Valley Sanitation District Wastewater Revenue Refunding Bonds, Series 2020” (attached and incorporated hereto as Exhibit A-3).

related to the portion of debt that financed the rehabilitation of Ukiah’s wastewater treatment plant (“Rehab Debt”) and the second is related to the portion that financed the capacity upgrade to the plant (“Capacity Debt”). The Operating Agreement, complimented by the 2020 Refinancing Agreement, dictates how the percentage share of the Rehab Debt adjusts each year using the Allocation Methodology. The Capacity Debt share does not regularly adjust annually; however, in the event of detachment, share of Capacity Debt is adjusted. Ukiah and the District have not yet agreed on the method for transferring to Ukiah the portion of debt service on the refinancing of debt for the wastewater treatment plant (“WWTP Refinancing”) attributable to the sewer accounts in the Overlap Area. Because the Capacity Debt is treated differently than the portion attributed to the Rehab debt - by mutual agreement of both agencies – the reduction to debt service illustrated below is less than that of operating costs presented earlier.

The table presented below illustrates the effects to debt service as a result of detachment.<sup>6</sup>

**DEBT SERVICE - DISTRICT**

	2021	2022	2023	2024	2025
Current projected debt service	1,988,550	1,997,710	2,003,522	2,010,451	2,015,473
Debt service with detachment	1,171,414	1,179,604	1,184,456	1,190,434	1,194,514
Reduction	41.09%	40.95%	40.88%	40.79%	40.73%
Debt coverage w detachment	1.34	1.93	2.26	2.25	1.40



<sup>6</sup> Coverage calculations result in an improvement to District debt coverage due to the higher value of reduced debt service compared to the effects to net revenues. In other words, the effects of reduced debt service resulting from detachment are more influential to coverage than the changes to net revenues. Further discussion is provided in footnote 8 below.

***c. Detachment should not negatively affect the District’s proportional net revenues or ability to meet its bond covenants.***

Based on results from the Ukiah/District rate study presented to the Ukiah City Council and the District Board of Directors on March 4, 2020 (the “Rate Study”),<sup>7</sup> net revenue from rates (the amount that revenues exceed the District’s share of operating expenses) in the Overlap Area for District ratepayers would average \$535,576 annually through 2025.<sup>8</sup> However, non-rate revenue collected by the District, including property taxes and other special taxes, averaging \$503,000 annually, would remain with the District (subject to certain exceptions for property tax) and preserve the District fiscally.

Specifically, of the \$503,000 of non-rate revenue collected by the District, it received \$57,734 in property tax revenues in 2018-19, much of which it collected from the 1304 parcels in the detachment area. Prior to detachment, those revenues are available to the District to fund expenses, including those of operating, maintaining, and repairing the wastewater collection system and wastewater treatment plant that are shared between Ukiah and the District. After detachment, the District will no longer be entitled to those property taxes. Their disposition will be the subject of a tax-sharing agreement approved by Ukiah and the Mendocino County Board of Supervisors, acting on behalf of the District. (See Cal. Rev. & Tax Code §99.)

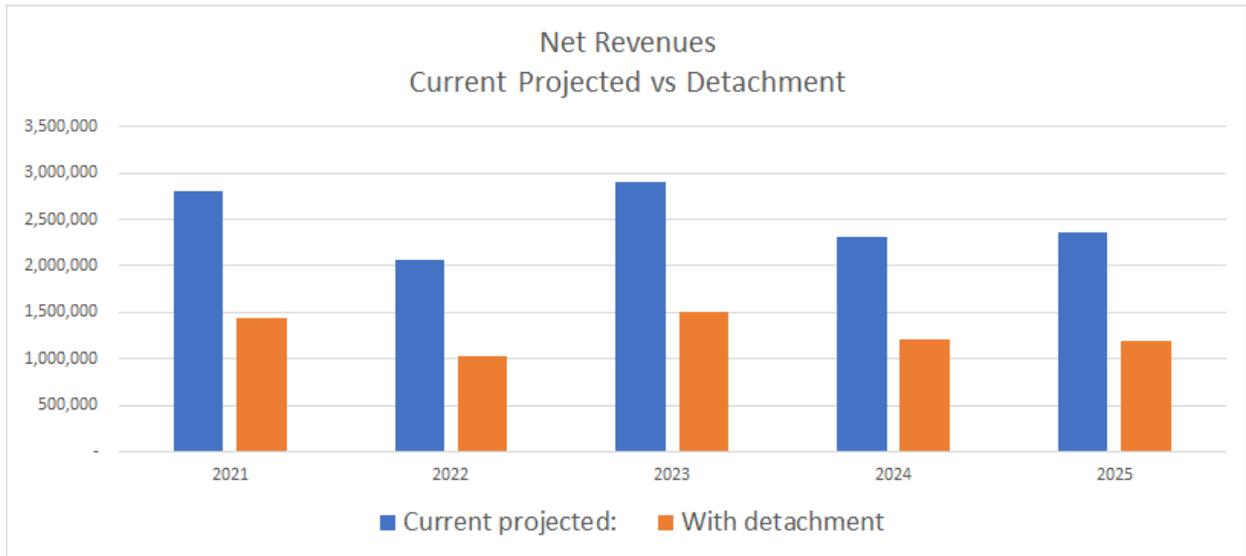
The table presented below illustrates the effect of detachment to District net revenues.<sup>9</sup>

<b>NET REVENUES - DISTRICT</b>					
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
<b>Current projected:</b>					
Operating income (loss) supported by rate revenues	2,366,395	1,576,271	2,352,803	1,731,921	1,760,127
Non-rate revenue	446,488	493,896	552,051	587,386	596,484
<b>Net revenues</b>	<b>2,812,883</b>	<b>2,070,167</b>	<b>2,904,853</b>	<b>2,319,307</b>	<b>2,356,611</b>
<b>With detachment</b>					
Operating income (loss) supported by rate revenues	1,000,438	541,391	958,395	620,958	604,389
Non-rate revenue	446,488	493,896	552,051	587,386	596,484
<b>Net revenues</b>	<b>1,446,926</b>	<b>1,035,287</b>	<b>1,510,445</b>	<b>1,208,343</b>	<b>1,200,873</b>

<sup>7</sup> The “Joint Sewer Rate Study Draft Findings and Recommendations” presented on March 11, 2020, to the Ukiah City Council and the Ukiah Valley Sanitation District Board of Directors (attached and incorporated hereto as Exhibit A-4); see also “City of Ukiah & Ukiah Valley Sanitation District 2020 Joint Sewer Rate Study Final Report April 24, 2020” (the “Joint Rate Study”) information from which was used in part for the March 11, 2020, joint presentation (attached and incorporated hereto at Exhibit A-5).

<sup>8</sup> Estimations derived from the City of Ukiah and Ukiah Valley Sanitation District 2020 Joint Sewer Rate Study.

<sup>9</sup> Net revenues presented here do not include settlement payments from City to District of \$1 mil through 2023, as those revenues in full amount of the settlement, \$4.9 mil, were recognized by the District in 2019. Significant variances in net income in both scenario between 2021 and 2023 result from the effects of expected capital expenditure changes in those years.

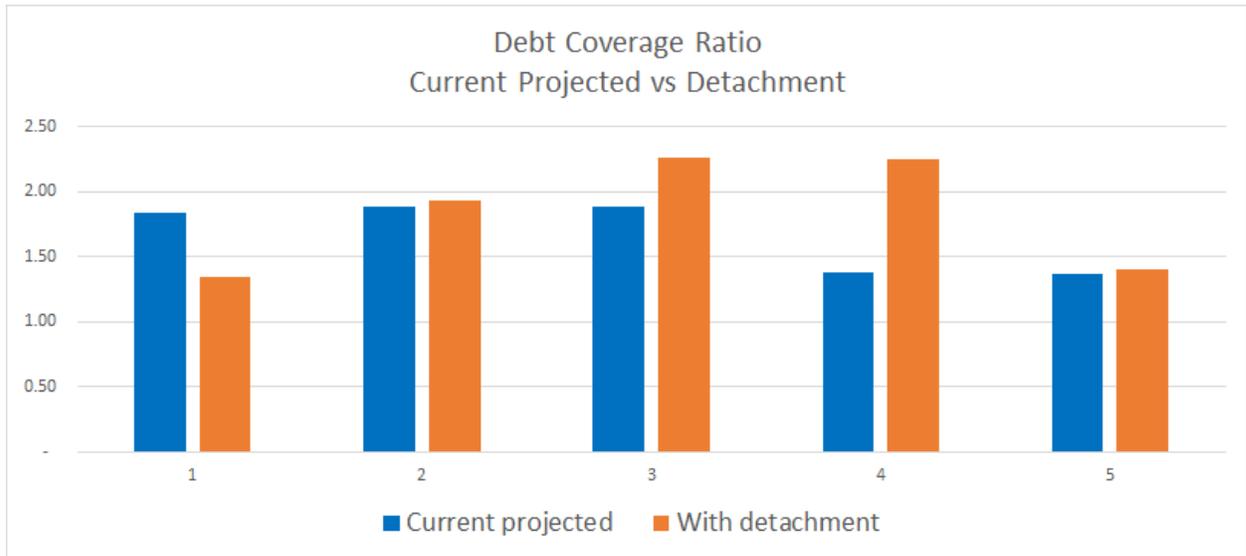


Debt coverage ratios for the District after detachment are estimated to equal 1.34 times its debt service on the WWTP Refinancing in the first year, 2021, using one of several options at its disposal, which include the use of its rate stabilization reserve (a near- to intermediate-term solution), adjustment to its rate schedule, reductions to administrative costs, or a combination of all three. This would meet the bond coverage test prescribed in the District’s 2020 Refunding Bonds indenture. Projected out beyond the point of detachment in 2021, the District’s required coverage ratio would improve further provided it address its rate structure accordingly and/or reduce its costs.

The table presented below illustrates the effect to District debt coverage ratio with detachment.<sup>10</sup>

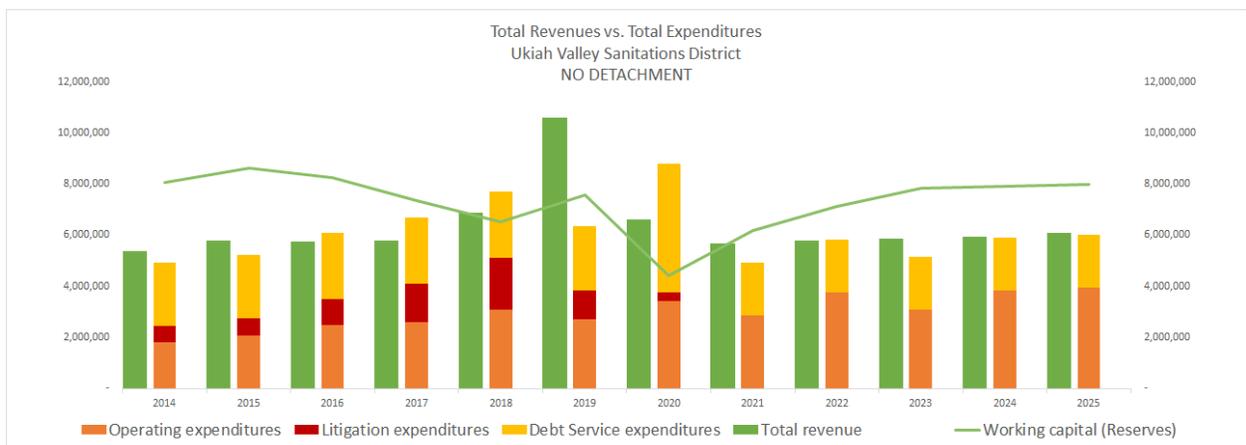
<b>DEBT COVERAGE RATIO - DISTRICT</b>					
	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
<b>Debt coverage ratio</b>					
Current projected	1.84	1.88	1.88	1.38	1.37
With detachment	1.34	1.93	2.26	2.25	1.40

<sup>10</sup> Coverage calculations assume the use of a rate stabilization reserve in the amount of approximately \$346k annually or a one-time adjustment to District rate revenues of 13.5 percent in 2022. The District has the option to use either or a combination of both.



**d. The District’s reserve and financial condition should not be negatively affected by the detachment.**

Between fiscal years 2016 and 2018, the District’s expenditures outpaced its revenues, largely due to the \$6.8 million in litigation costs it incurred in its lawsuit against Ukiah. In 2019 the District recognized revenue from the settlement agreement with Ukiah in the amount of \$4,984,310. The amount is paid to the District by Ukiah over five annual installments. Excluding those legal expenditures, the District collected sufficient revenues to meet operating and capital needs.

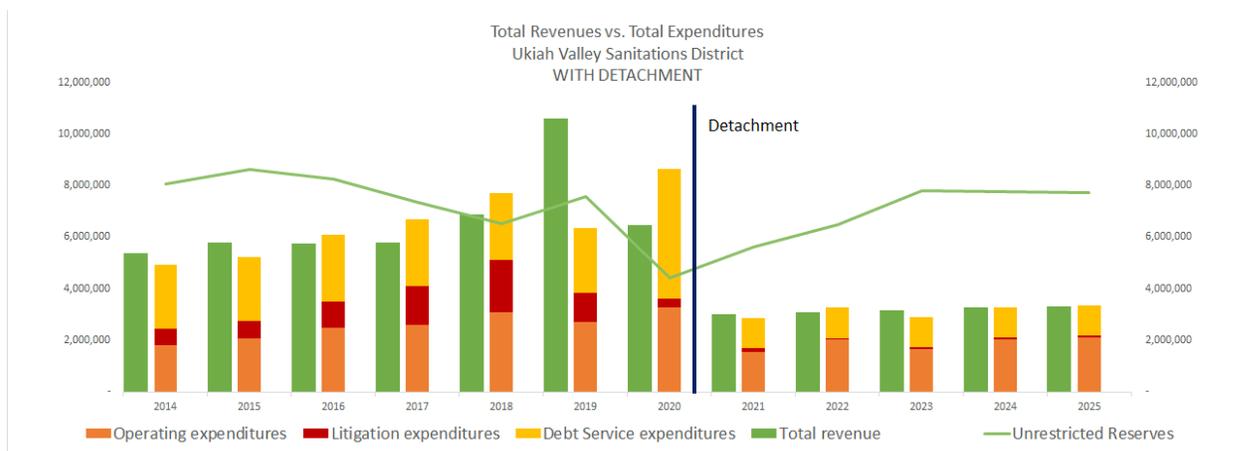


The District’s working capital (reserves), shown by the green line in the charts above and below, decreased significantly as a result of its litigation activities. Even with settlement payments from Ukiah, unrestricted reserve amounts are estimated not to return to 2014 levels until 2024.

Though the District may realize overall reductions to net income from rate revenue from detachment, the District’s reserves will not be impacted negatively in the near term due to the preservation of its non-rate revenues and overall reduction in shared operating costs and debt service, and may even grow at a higher rate provided the District adjusts its rates appropriately.

This demonstrates that the District will remain financially solvent and able to continue participating in the Operating Agreement with Ukiah.

It should be noted, however, that a large portion of the available reserves at the District’s disposal were generated from charges paid by ratepayers in the Overlap Area. As part of this Proposal, Ukiah is not requesting those commensurate reserve amounts be transferred to Ukiah along with the overlap ratepayer accounts. Ukiah expects the District will utilize those reserves as they were intended when collected: i.e., to benefit the joint wastewater system, including shared main lines and the wastewater treatment plant, and not areas of the wastewater collection system that are considered District-only such as the District’s portion of the wastewater collection system. To do otherwise would be unlawful.



**e. Detachment will result in valuable financial benefits to ratepayers.**

*Detachment will result in valuable savings to Ukiah sewer service ratepayers formerly in the Overlap Area.*

Because most sewer service costs are fixed, the more customers which are served by a utility results in more value for each individual customer. The effects specifically to those ratepayers in the Overlap Area moving from the District’s rate schedule to Ukiah’s as a result of detachment would be an average monthly savings for residential ratepayers of \$1.43 (2.04 percent decrease in billed charges). Commercial ratepayers would benefit on average \$8.07 (1.84 percent decrease in billed charges) per month.<sup>11</sup>

<sup>11</sup> Estimations derived from the Joint Rate Study, *supra*, fn 7. Ukiah would have the option to reduce rates 5.5 percent in 2022 at its discretion due to increased net revenues from detachment.

**BILL IMPACT - OVERLAP RATEPAYERS**

	2022 District Rates	2022 City Rates	\$ Increase (Decrease)	% Change
Customer:				
Single family w/3 HCF (low)	\$ 58.10	\$ 56.75	\$ (1.35)	-2.32%
Single family w/6 HCF (average)	68.28	66.87	(1.41)	-2.07%
Single family w/12 HCF (high)	88.64	87.11	(1.53)	-1.73%
Commercial 1 w/15 HCF (average)	177.44	173.74	(3.70)	-2.09%
Commercial 2 w/42 HCF (average)	509.98	499.56	(10.42)	-2.04%
Commercial 3 w/32 HCF (average)	506.20	497.65	(8.55)	-1.69%
Commercial 4 w/34 HCF (average)	620.60	611.00	(9.60)	-1.55%

*Detachment will result in valuable savings to all Ukiah sewer service ratepayers.*

In the event of detachment, rates to all Ukiah sewer service ratepayers, including those found in the current Overlap Area, would decrease 5.5 percent beginning in 2022. The average savings to a typical residential ratepayer would be \$4.09 per month. The average savings to a typical commercial ratepayer would be \$25.93 per month. In these challenging times, these savings are valuable.

**BILL IMPACT - ALL CITY RATEPAYERS**

	2021	2022	\$ Increase (Decrease)	% Change
Customer:				
Single family w/3 HCF (low)	\$ 60.05	\$ 56.75	\$ (3.30)	-5.50%
Single family w/6 HCF (average)	70.76	66.87	(3.89)	-5.50%
Single family w/12 HCF (high)	92.18	87.11	(5.07)	-5.50%
Commercial 1 w/15 HCF (average)	183.85	173.74	(10.11)	-5.50%
Commercial 2 w/42 HCF (average)	528.64	499.56	(29.08)	-5.50%
Commercial 3 w/32 HCF (average)	526.61	497.65	(28.96)	-5.50%
Commercial 4 w/34 HCF (average)	646.57	611.00	(35.57)	-5.50%

# EXHIBIT D-1

OPERATING  
AGREEMENT FOR THE  
COMBINED SEWER  
SYSTEM SERVING THE  
UKIAH VALLEY  
SANITATION DISTRICT  
AND THE CITY OF UKIAH

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**OPERATING AGREEMENT FOR THE COMBINED SEWER SYSTEM  
SERVING THE UKIAH VALLEY SANITATION DISTRICT AND THE  
CITY OF UKIAH**

This Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah ("Agreement") is made and entered into in Ukiah, California, on the date last executed below ("Effective Date"), by and between the City of Ukiah ("CITY"), a general law municipal corporation, and the Ukiah Valley Sanitation District, a county sanitation district ("DISTRICT"). DISTRICT and CITY are, at times, collectively referred to hereafter as the "Parties."

**I. RECITALS:**

1. A proceeding between the Parties is presently pending in Sonoma County Superior Court entitled *Ukiah Valley Sanitation District v. City of Ukiah*, case no. SCV 256737 ("the Action").
2. The Parties entered a Participation Agreement, dated July 19, 1995 ("Participation Agreement"), as amended on March 24, 1999 ("Amendment No. 1") and again December 15, 2004 ("Amendment No. 2), collectively the "Participation Agreement," which set forth, among other things, the Parties' responsibilities regarding, and the terms under which the Parties provide, wastewater collection and treatment services to their respective ratepayers and residents.
3. Under the Participation Agreement, the CITY operates the Combined CITY/DISTRICT Sewer System (as defined herein) as one system with the combined treatment and collection costs apportioned between the CITY and the DISTRICT based on the ratio of CITY to DISTRICT Equivalent Sewer Service Units ("ESSUs") for each year of operation. The CITY also is the paying and receiving agent for the DISTRICT, performs all billing and collection services for the Combined CITY/DISTRICT Sewer System, and accounts to the DISTRICT for the funds it collects from DISTRICT ratepayers.
4. The sewer services the CITY performs can be fairly characterized as three functions ("Sewer Services"): (1) billing/collection of sewer service and connection fees, and disbursement of funds collected on behalf of the DISTRICT for payment to CITY for DISTRICT's allocated share of certain sewer system operations, maintenance, capital improvement, and financing costs, and accounting to the DISTRICT for the funds collected or spent; (2) operations and maintenance of the CITY wastewater collection facilities and the DISTRICT wastewater collection facilities, including the Trunk Line (defined below); and (3) operations and maintenance of CITY's wastewater treatment plant (defined below as CWWTP).
5. The Participation Agreement recites that CITY owns the CWWTP and predecessor agreements of the Parties recite that DISTRICT constructed the Trunk Line and the DISTRICT claims ownership thereof. The CITY contends that it owns wastewater collection facilities within its sewer-service jurisdictional boundaries (defined below collectively as CSS). The DISTRICT contends that it owns wastewater collection facilities within its sewer-service jurisdictional boundaries and the Trunk Line located within both the CSS and DSS that

transports all wastewater from the Parties' respective wastewater collection facilities to CWWTP (defined below collectively as DSS).

6. In connection with the issuance of \$75,060,000 aggregate principal amount of the Association of Bay Area Governments 2006 Water and Wastewater Revenue Bonds, Series A (the "2006 Bonds") to finance a project ("CWWTP Project") to rehabilitate / upgrade and increase the capacity of the CWWTP, (A) the Parties entered Amendment No. 2 and a Financing Agreement, dated March 2, 2006 ("Financing Agreement"), (B) the CITY entered an Installment Sale Agreement, dated as of March 1, 2006 ("2006 ISA") with the Association of Bay Area Governments ("ABAG") and Wells Fargo National Bank, as bond trustee ("Bond Trustee"), and (C) ABAG and the Bond Trustee entered into an Indenture of Trust, dated as of March 1, 2006 ("2006 Indenture"). Under the 2006 ISA, the CITY agreed to repay the 2006 Bonds by making installment payments ("2006 Installment Payments"). The purpose of the Financing Agreement was to apportion a portion of the 2006 Installment Payments to the DISTRICT in accordance with the methodology set forth in the Participation Agreement. Under the Financing Agreement, the DISTRICT agreed to set rates for services and facilities furnished by the DISTRICT's portion of the Combined CITY/DISTRICT Sewer System during each fiscal year that are sufficient, after making allowance for contingencies and error in the estimates, to yield net revenues (being total revenues less all costs apportioned to the DISTRICT under the Participation Agreement for the operation, maintenance and repair of the DISTRICT's portion of the Combined CITY/DISTRICT Sewer System) which are at least equal to 120% of the DISTRICT's allocated share of the 2006 Installment Payments for that fiscal year. In addition, the Financing Agreement provides that the CITY, as the DISTRICT's collecting and paying agent, apply revenue it collects on the DISTRICT's behalf to pay the DISTRICT's allocated share of the 2006 Installment Payments.

7. The CITY and the DISTRICT mutually desire to pursue a refinancing of the 2006 Bonds to obtain debt service savings and to accommodate the DISTRICT's elections under this Agreement ("Refinancing"). The Refinancing will require transparency and full cooperation between the Parties and, as set forth herein, both CITY and DISTRICT agree that each shall be included in all written and oral communications relating to the Refinancing involving third parties (e.g. underwriters, investors, rating agencies, advisors). The Parties agree to make good faith efforts to undertake the Refinancing in a timely manner, acknowledging the same will require an unconditional commitment by both the CITY and the DISTRICT to pay their respective share of the debt service for the Refinancing in accordance, and in keeping, with this Agreement and the requirements of underwriters, bond insurers and bond counsel to obtain the most favorable bond rating and interest rate available under the market conditions for tax free revenue bonds existing at the time of the Refinancing

8. The Parties enter this Agreement for the following purposes:

a. to settle the claims asserted in the Action in accordance with the Settlement Agreement and Release, attached hereto as **Exhibit 1**;

b. to set forth the terms under which the DISTRICT may assume, at its election, all or part of the first two Sewer Services functions currently performed by the CITY pursuant to the Participation Agreement;

c. to amend the terms of the Participation Agreement. The Parties agree in section II.H.2. that, in the event of any inconsistency between any provision of this Agreement and the Participation Agreement, this Agreement shall control.

## **II. TERMS**

### **A. DEFINITIONS**

1. “2006 Bonds” means the \$75,060,000 aggregate principal amount of the Association of Bay Area Governments, 2006 Water and Wastewater Revenue Bonds, Series A issued pursuant to the 2006 Indenture.

2. “Capacity Project” means the “project to increase the capacity of the wastewater treatment plant to permit additional new connections in both the DISTRICT and the CITY for treatment of wastewater in the CWWTP, as more particularly described in paragraph 7, page 2 of Amendment No. 2.

3. “Capacity Project ESSUs” means the 2,400 ESSUs made available in the CWWTP by the Capacity Project for new Connections or increased use by existing Connections.

4. “Capital Improvement” means the addition of a permanent structural change or the restoration, repair, or replacement of some aspect of a facility that will either enhance the asset's overall value, increase its useful life or adapt it to new uses

5. "CITY Customer” means any Customer with a Connection to the CSS.

6. “CITY Combined Sewer Budget” means the annual fiscal year budget (July 1- June 30) adopted by the City Council, in accordance with this Agreement, for the Combined Sewer System.

7. “City Sewer System” or “CSS” means all portions of the sewer collection system located within the CITY’s sewer-service jurisdictional boundaries, including, but not limited to, all sewer laterals, mains, and related facilities that are part of the combined sewer system. For purposes of this Agreement, the CSS shall extend to include any additional portions of the sewer collection system located within boundaries to which the CITY’s sewer-service jurisdiction may extend through future changes in organization. Notwithstanding any contrary provision, the Trunk Line shall not be a part of the CSS.

8. “Combined CITY/DISTRICT Sewer System” means the CSS, DSS, Trunk Line and CWWTP, and any combination of all or part of the foregoing, the Direct and Indirect costs of which are shared by the Parties in accordance with this Agreement.

9. "Connection(s)" means the lateral sewer line that serves to transport wastewater directly from any property or structure (residential, commercial, industrial, or otherwise) to a sewer main located within the DSS or CSS.

10. "Connection fee" means the fee for a connection based on the ESSUs assigned to the Connection in accordance with section II.E.

11. "Customer(s)" means any customer (whether individuals, businesses, governmental entities or otherwise) or property maintaining a Connection to the DSS or CSS.

12. "CWWTP" means the CITY's wastewater treatment plant.

13. "Direct Costs" means all costs specifically and completely attributable to the Combined CITY/DISTRICT Sewer System but specifically excluding Indirect Costs.

14. "DISTRICT Combined Sewer Budget" means the annual fiscal year budget adopted by the DISTRICT's board, in accordance with this Agreement, for the Combined CITY/DISTRICT Sewer System.

15. "DISTRICT Customer" means any Customer with a Connection to the DSS.

16. "DISTRICT Sewer System" or "DSS" means all portions of the sewer collection system located within DISTRICT's boundaries, including, but not limited to, all sewer laterals, mains, and related facilities that are part of the combined sewer system. DSS does not include the Trunk Line, although it is owned by the DISTRICT. For purposes of this Agreement, the DSS shall extend to include any additional portions of the sewer collection system located within boundaries to which the DISTRICT's sewer-service jurisdiction may extend through future changes in organization.

17. "DRWWTP" means any future DISTRICT regional wastewater treatment plant(s) and includes any non-CITY facility utilized by DISTRICT to treat sewer wastewater.

18. "ESSU(s)" means the equivalent sewer service units assigned to a Connection or reserved for a Connection (residential, commercial, industrial, or otherwise) for the purpose of charging a Connection fee and used to determine the number of the 2,400 Capacity Project ESSUs used by each party and the number of ESSUs assigned to a Connection for purposes of transferring ESSUs from one party to the other.

19. "Effective Date" means the date set forth in the opening paragraph hereof.

20. "Financing Agreement" means that certain agreement executed by CITY and DISTRICT on March 2, 2006, as amended or supplemented.

21. "Indirect Costs" means all costs used by or which support the Combined CITY/DISTRICT Sewer System that are not Direct Costs. Indirect Costs include, but are not limited to, billing and collections, general services allocation, administration, and overhead costs.

22. "Installment Payments" means the payments required under the 2006 Installment Sale Agreement, or any agreement entered in connection with the Refinancing.

23. "2006 Installment Sale Agreement" means that certain agreement entered by CITY, ABAG, and the Bond Trustee, dated March 1, 2006, as amended or supplemented.

24. "Overlap Area" means that portion of the DISTRICT's jurisdictional boundaries that is within the City limits of CITY.

25. "Participation Agreement" means the Participation Agreement entered into by the Parties on July 19, 1995, and includes, unless otherwise specified, Amendment No. 1 to the Participation Agreement, dated March 24, 1999 ("Amendment No. 1"), and Amendment No. 2 to the Participation Agreement ("Amendment No. 2"), dated December 15, 2004.

26. "Settlement Agreement" means the Settlement Agreement and Release, attached hereto as **Exhibit 1**.

27. "Sewer service jurisdictional boundaries" means the area within the boundaries of the CITY or the DISTRICT within which the CITY or the DISTRICT maintains jurisdiction to provide sewer services.

28. "Trunk Line" means the main sewer line running to the CWWTP into which all sewage from the Combined CITY/DISTRICT Sewer System enters. The Trunk Line is owned by the DISTRICT.

29. "Upgrade/Rehabilitation Project" means the "project to rehabilitate and upgrade the wastewater treatment plant," as more particularly described in paragraph 7, page 2 of Amendment No. 2 to the Participation Agreement.

## **B. BILLING AND COLLECTION OF REVENUE—DISTRICT CUSTOMERS**

1. **Transfer of Records.** Within sixty (60) days after written request from the DISTRICT, CITY shall provide DISTRICT the same or reasonably similar access to CITY billing and collection records and information, in the form maintained by the CITY, as the CITY staff has to those records and information, including all such billing and collection records maintained by CITY, its agents, or third parties who hold, maintain, or use the same to perform sewer billing and collection services for CITY. Absent agreement of the Parties, the CITY shall have no obligation to convert records or information into another format or electronic form. The purpose of this provision is to timely provide DISTRICT complete access to all such records, information, and materials so DISTRICT may promptly and fully perform billing and collection services on its own behalf for DISTRICT Customers in a manner consistent with that done by CITY and for continuity of such service during and following the transition of services provided for herein. CITY shall use its best efforts to cooperate with the DISTRICT, to timely transfer customer account information and billing and collection records to DISTRICT, and to otherwise comply with this provision. The

Parties each acknowledge and agree they are required to maintain confidentiality of Customer account information and to take adequate security measures to protect against identity theft.

2. **Transfer of Responsibility for Billing and Collection Services.** Subject to section II.D.2.d., on not less than twelve (12) months written notice to CITY, or such other period of notice as agreed upon by the Parties, DISTRICT may, in its sole discretion, elect to discontinue all of the billing and collection services provided to DISTRICT by CITY. Upon assuming its own billing and collection services DISTRICT shall establish or utilize its own billing systems to send bills and collect revenues and financial accounts in which to deposit and manage such funds. If DISTRICT wishes to discontinue only a portion of the billing and collection services provided to DISTRICT by CITY: DISTRICT's written notice to CITY shall include a description of which portion of the billing and collection services it is assuming; DISTRICT may do so only with CITY approval, in CITY's sole discretion; and, CITY shall notify DISTRICT in writing within 45 days of its decision concerning DISTRICT's partial assumption request--otherwise partial discontinuance shall be deemed approved. Subject to section II.D.2.d. on not less than eighteen (18) months written notice to DISTRICT, and not less than twelve (12) months after CITY transfers to DISTRICT all billing and collections records as required by section II.B.1., CITY may discontinue performing DISTRICT's billing and collection functions. If CITY wishes to discontinue performing only a portion of DISTRICT's billing and collection functions: CITY's written notice to DISTRICT shall include a description of the portion of the billing and collection services it wishes to discontinue; CITY may do so only with DISTRICT's approval, in DISTRICT's sole discretion; and, DISTRICT shall notify CITY in writing within 45 days of its decision concerning CITY's partial assumption request--otherwise partial discontinuance shall be deemed approved. The Parties acknowledge and agree they shall use best efforts to cooperate with each other so as to efficiently and accurately set rates.

3. **Responsibility for Billing and Collection Services Where CITY Continues Billing & Collection Functions for Combined CITY/DISTRICT Sewer System.** Notwithstanding section II.B.1, unless or until discontinued as provided in section II.B.2, CITY shall continue to provide all billing and collection of revenue services for the Combined CITY/DISTRICT Sewer System, including provision of such services to DISTRICT Customers. The CITY shall continue to account for DISTRICT revenues and expenditures in accordance with GASB guidelines and generally accepted accounting standards, which accounting shall be segregated from CITY's accounting of its own revenues and expenditures when identifiable as such. Notwithstanding section II.B.1., as long as the CITY continues to perform billing and collection services to the DISTRICT, CITY shall provide DISTRICT with access to requested billing and collection records pertaining to DISTRICT Customers (in the same medium, manner, and form as otherwise required under section II.B.1.), including, but not limited to, Customer list(s), Customer balance detail, Customer payment detail, Customer invoices, accounts receivable detail, general ledger, income and expense statements, trial balances, deposits to DISTRICT and/or funds/accounts in which DISTRICT funds are held, transfers from such funds/accounts, and any other such information in the CITY's possession or under its control requested by DISTRICT, including without limitation that related to: (1) the amount of revenue collected from DISTRICT Customers; (2) the operations and maintenance costs of the DSS, CSS, and Trunk Line; (3) the DISTRICT's allocated portion of operations and maintenance costs of the CWWTP; (4) Capital Improvement costs of the Combined CITY/DISTRICT Sewer System, including those portions

properly allocated to DISTRICT; and, (5) DISTRICT's allocable share of the Installment Payments (or any Refinancing thereof).

**4. Implementation of DISTRICT Assuming Billing and Collection Function.**

Upon any notice of discontinuance pursuant to Section II.B.2, if either party desires to discuss details or issues associated with transferring all or any portion of the billing and collection function to the DISTRICT, the Parties or their representatives shall meet to undertake that discussion within 30 days of the notice. If a dispute arises concerning those details or issues, unless otherwise agreed in writing, the Parties shall each identify the disputed details or issues, along with a proposed resolution, in a writing provided to the other not later than sixty (60) days after the notice required by section II.B.2. is given. Should the dispute persist, the matter shall be submitted to dispute resolution as provided in Section II.G.1 within seventy-five (75) days after the notice required by section II.B.2. is given, unless the Parties agree to extend the time. For purposes of this provision, if the arbitrator determines a party unreasonably proposed or opposed disputed items, the other party in such proceeding shall be entitled to recover from the party found unreasonable its attorney's fees, costs, and expenses incurred therein. Nothing in this provision shall be deemed to alter, modify, or limit the DISTRICT's right under this Agreement to receive records and information under section II.B.1 or, subject to Section II.D.2.d., assume its own billing and collection functions.

**5. Prohibition on Further CITY Charges.** Effective on, and prorated to, the date DISTRICT begins performing all or any portion of its own billing and collection services, CITY shall be prohibited from charging DISTRICT for any costs, however characterized, for or associated with the billing and collection services assumed by DISTRICT, except for services expressly requested by DISTRICT in support of DISTRICT performing its own billing and collection services.

**C. OPERATIONS AND MAINTENANCE**

**1. DSS and CSS (Collection Systems) and Trunk Line.**

**a. Transfer of Records.** Within sixty (60) days after the CITY receives a written request from the DISTRICT, CITY shall provide DISTRICT the same or reasonably similar access to operations and maintenance records and information, in whatever form maintained by the CITY, as the CITY staff has to those records and information, including all such records and information maintained by CITY, its agents, or third parties who hold, maintain, or use the same to perform services that are material to the DISTRICT's assumption of operation and maintenance of the DSS and/or Trunk Line. Such records shall include information and materials material to CITY's operations and maintenance of the DSS (as well as information and material concerning the CSS and CWWTP which are necessary or beneficial in the performance of operations and maintenance of the DSS), the Trunk Line, and the DISTRICT's allocated portion of operations and maintenance costs of the CWWTP, Trunk Line and DSS. The CITY shall not be in breach of this Section II.C.1.a, if, beyond CITY's reasonable control, third parties fail to produce the records within the time required herein or are not legally required to provide the information at the CITY's direction. The records shall be transferred in usable, digital, form, if reasonably feasible, and in hard copy form where appropriate or necessary or otherwise requested by

DISTRICT. CITY may elect to satisfy this requirement by providing DISTRICT with access to such records as maintained by the CITY in the ordinary course of business. Absent agreement of the Parties, the CITY shall have no obligation to convert records or information into another format. The purpose of this provision is to timely provide DISTRICT with such records (or access thereto), information, and materials so DISTRICT may promptly and fully perform operations and maintenance functions for the DSS and/or Trunk Line in a manner consistent with that done by CITY and to provide continuity of such service during and following the transition of services provided for herein. Consistent with the provisions of this section II.C.1.a, CITY shall use its best efforts to cooperate with the DISTRICT, to timely transfer or provide access to such records and information to the DISTRICT, and to otherwise comply with this provision.

b. **Transfer of Responsibility to Operate and Maintain DSS and Trunk Line.** Subject to section II.D.2.d., DISTRICT may, in its sole discretion, elect to discontinue all of the operations and maintenance services provided to DISTRICT by CITY for the DSS and / or Trunk Line upon not less than twelve (12) months written notice to CITY, unless otherwise agreed by the Parties. If DISTRICT wishes to discontinue only a portion of the operations and maintenance services provided by the CITY to DISTRICT for the DSS or Trunk Line: DISTRICT's written notice to CITY shall include a description of the portion of the operation and maintenance services it is assuming; DISTRICT may do so only with CITY approval, in CITY's sole discretion; and, CITY shall notify DISTRICT in writing within ninety (90) days of its decision concerning DISTRICT's partial assumption request--otherwise partial discontinuance shall be deemed approved. Subject to section II.D.2.d., on not less than twenty-four (24) months written notice to DISTRICT, and not less than eighteen (18) months after the CITY transfers to DISTRICT operations and maintenance records as required by section II.C.1.a., CITY may discontinue performing operations and maintenance of the DSS or Trunk Line. If CITY wishes to discontinue performing only a portion of such operations and maintenance functions: CITY's written notice to DISTRICT shall include a description of the portion of the operation and maintenance services it wishes to discontinue; CITY may do so only with DISTRICT's approval, in DISTRICT's sole discretion; and, DISTRICT shall notify CITY in writing within ninety (90) days of its decision concerning CITY's partial assumption request--otherwise partial discontinuance shall be deemed approved. In any event, unless otherwise agreed, discontinuance of such service shall not occur until DISTRICT provides CITY with a copy of the completed application DISTRICT has filed with the North Coast Regional Water Quality Control Board ("NCRWQCB") for a NPDES/Waste Discharge permit, to the extent required, for the portion of the DSS or Trunk Line DISTRICT would operate and maintain ("Waste Discharge Permit"). The DISTRICT may not assume the operations and maintenance of the DSS less than six (6) months after the NCRWQCB has issued the Waste Discharge Permit, to the extent a permit is required. Notwithstanding any other provision in this Agreement, CITY may not discontinue operation and maintenance functions for the DISTRICT unless DISTRICT is then permitted to assume its own billing and collection functions.

c. **Responsibility to Perform Operations and Maintenance.** Notwithstanding section II.C.1.a., unless and until discontinued as provided in section II.C.1.b., CITY shall continue to provide all operations and maintenance services for the DSS, CSS, and Trunk Line in accordance with the Participation Agreement and the standards in Section II.C.3.a., as well as the information and materials required by section II.B.3.

d. **Provision of Information to Determine Whether to Assume Operation and Maintenance of DSS and/or Trunk Line.** CITY shall promptly provide DISTRICT with any information and records within CITY's custody or control reasonably requested by DISTRICT to evaluate the relative cost and benefit to the DISTRICT of assuming in whole or in part the operation and maintenance of the DSS and/or Trunk Line and the means of undertaking such operation and maintenance and setting rates to cover such costs.

e. **Implementation of DISTRICT Assuming Operation and Maintenance Function.** Upon any notice of discontinuance pursuant to section II.C.1.b., if either party desires to discuss details or issues associated with transferring all or any portion of the operation and maintenance function of the DSS or Trunk Line to the DISTRICT, the Parties or their representatives shall meet to undertake that discussion within 30 days of the notice. If a dispute arises concerning those details or issues, the Parties shall each identify the disputed details or issues, along with a proposed resolution, in a writing provided to the other not later than sixty (60) days after the notice required by section II.C.1.b. is given. Should a party fail to meet and confer regarding said details or should the dispute persist, the matter shall be submitted to dispute resolution as provided in Section II.G.1 within seventy-five (75) days after the notice required by section II.C.1.b. is given unless the Parties agree to extend the time. For purposes of this provision, if the arbitrator determines a party unreasonably proposed or opposed disputed items, the other party in such proceeding shall be entitled to recover from the party found unreasonable its attorney's fees, costs, and expenses incurred therein. Nothing in this provision shall be deemed to alter, modify, or limit the DISTRICT's right under this Agreement to receive records and information under section II.C.1.a. or assume operations and maintenance functions of the DSS or Trunk Line. CITY shall maintain the right to continued use of the Trunk Line in accordance with Section II.C.2.b.

f. **Prohibition on Further CITY Charges.** Effective on, and prorated to, the date DISTRICT begins performing its own operations and maintenance services, CITY shall (1) have no obligation to incur any expense or provide any assistance to DISTRICT in connection with the operation or maintenance of the DSS (except continued compliance with section II.C.1.a.) and (2) shall be prohibited from charging DISTRICT for any costs, however characterized, associated with or for operations and maintenance of the DSS, CSS, or Trunk Line assumed by DISTRICT, except for services expressly requested by DISTRICT in support of DISTRICT performing operations and maintenance functions.

g. **DISTRICT obligation to furnish CITY with records.** Within sixty (60) days after the DISTRICT assumes operations and maintenance of all or a portion of the DSS or Trunk Sewer, and within any future request for such information by CITY, DISTRICT shall provide CITY the same or reasonably similar access to operations and maintenance records and information, in whatever form maintained by the DISTRICT, as the DISTRICT staff has to those records and information, including all such records and information maintained by DISTRICT, its agents, or third parties who hold, maintain, or use the same to perform services that are material to the DISTRICT's assumption of operation and maintenance of the DSS and/or Trunk Line and the CITY's operation and maintenance of the CSS, CWWTP, and/or Trunk Line. Such records shall include information and materials material to DISTRICT's operations and maintenance of

the DSS or Trunk Line. The DISTRICT shall not be in breach of this Section II.C.1.g, if, beyond DISTRICT's reasonable control, third parties fail to produce the records within the time required herein or are not legally required to provide the information at the DISTRICT's direction. The records shall be transferred in usable, digital, form, if reasonably feasible, and in hard copy form where appropriate or necessary or otherwise requested by CITY. DISTRICT may elect to satisfy this requirement by providing CITY with access to such records as maintained by the DISTRICT in the ordinary course of business. Absent agreement of the Parties, the DISTRICT shall have no obligation to convert records or information into another format. The purpose of this provision is to timely provide CITY with such records, information, and materials so CITY may promptly and fully perform operations and maintenance functions for the CSS and/or Trunk Line or the CWWTP. Consistent with the provisions of this subsection II.C.1.g, DISTRICT shall use its best efforts to cooperate with the CITY, to timely provide access to such records and information to the CITY, and to otherwise comply with this provision.

Nothing in this Agreement shall be deemed to restrict the right of CITY to continue utilization of the Trunk Line for transmission of sewage from the CSS to the CWWTP, inclusive of its rights to discharge additional wastewater into the Trunk Line from present or future Customers and Connections.

## **2. CWWTP.**

a. **Transfer of Records.** Within sixty (60) days after the CITY receives a written request from the DISTRICT, CITY shall provide to DISTRICT access to all records and information in the CITY's possession or under its control concerning the CWWTP. Such records shall include all information and materials associated with CITY's operations and maintenance of the CWWTP, inclusive of each Party's allocated portion of operations and maintenance and Capital Improvement costs of the CWWTP, maintained by CITY, its agents, or third parties who hold, maintain, or use such information and materials to perform operations and maintenance of the CWWTP, provided such third parties are legally obligated to provide the information at the CITY's direction. The records shall be made available or transferred in usable, digital, form, if feasible and not in violation of any applicable software license, and in hard copy form where appropriate or necessary or otherwise requested by DISTRICT. Absent further agreement of the Parties, CITY shall have no obligation to provide electronic records other than in the form maintained by the CITY. CITY shall make paper records available as maintained in the ordinary course of business for DISTRICT inspection and copying. DISTRICT shall not be charged for CITY time or other costs associated with producing copies beyond copying charges permitted by the California Public Records Act. (Govt. Code, §§ 6250 *et seq.*) The purpose of this provision is to timely provide DISTRICT complete access to all such records, information, and materials so DISTRICT may promptly and fully assess the CWWTP and its operational, maintenance, and capital costs. Consistent with the provisions of this subsection II.C.2.a, CITY shall use its best efforts to cooperate with the DISTRICT, to timely transfer or provide access to such records and information to the DISTRICT, and to otherwise comply with this provision.

b. **DISTRICT's Utilization of CWWTP.** Nothing in this Agreement shall be deemed to restrict the right of DISTRICT to continue utilization of the existing capacity of the CWWTP, inclusive of its rights to discharge additional wastewater into the CWWTP from present

or future Customers and Connections in accordance with the terms of this Agreement. The Parties' respective rights and ability to discharge additional wastewater / ESSUs to the CWWTP is more particularly described below in this Agreement and may be modified, in accordance with requirements for amending this Agreement, including if the capacity of the CWWTP is increased by a project jointly funded by CITY and DISTRICT to receive and process additional sewage.

c. **Responsibility to Perform Operations and Maintenance.** CITY shall perform all operations and maintenance functions associated with the CWWTP. DISTRICT shall have no obligation whatsoever to perform such functions.

### 3. **Performance Standards & Information Sharing.**

a. **Performance Standards.** The performance of all operations and maintenance on and to the Parties' respective systems—the DSS and Trunk Line (DISTRICT) and CSS and CWWTP (CITY)—shall at all times be done in a timely manner and in keeping with, or exceeding, industry standards for the operation and maintenance of a municipal or county sewer district wastewater sewer collection system of the same nature and type as the subject system. To the extent either party is responsible or undertakes responsibility for operations and maintenance of any part of the CWWTP, Trunk Line, CSS, or DSS, that party shall comply with any permits issued for such facilities and operations, as well as applicable provisions of state and federal law, which regulate the subject sewer operations; provided, however, fines and penalties resulting from a discharge from the CWWTP that exceed a specific discharge limit shall be treated as an expense subject to allocation in accordance with Section II.D, unless the violation results from the gross negligence or willful misconduct of the CITY, its employees, contractors, or agents in the operation of the CWWTP, in which case such expense shall be paid exclusively by CITY.

b. **Information Sharing.** The Parties shall jointly implement an information-sharing system and protocol, the purpose of which is to allow one party to reasonably ascertain whether the other party is operating and maintaining the system in the manner consistent with the performance standards referenced above. In any event, each party shall promptly share such information and materials upon reasonable request from the other party.

## D. **COST ALLOCATION**

### 1. **Operations and Maintenance Costs of CWWTP, Trunk Line, DSS & CSS**

#### a. **Cost Allocation.**

(1) **CWWTP, DSS, CSS & Trunk Line:** CITY and DISTRICT shall each pay a certain allocated share of the costs of the Combined CITY/DISTRICT Sewer System. CITY and DISTRICT shall annually create a budget for the Combined CITY/DISTRICT Sewer System, consisting of the CITY Combined Sewer Budget and DISTRICT Combined Sewer Budget, as approved in accordance with this section II.D. The Parties shall budget such costs in compliance with California state laws and regulations, generally accepted accounting principles and GASB guidelines. The Indirect Costs of CITY and DISTRICT shall be budgeted and applied on a logical, consistent, reasonable, and rational basis. Each year, not later than sixty (60) days

prior to the start of its fiscal year, the Parties shall exchange their respective draft budgets for the Combined CITY/DISTRICT Sewer System and shall also provide any allocation plan and draft budgets of any department or fund of a party that is in turn allocating costs to that party's combined sewer budget.

The Parties will have thirty (30) days to review the draft budgets, pose questions, comments, and concerns and to provide the other Party with written objections to specific budget items or allocations and the basis for the objection to each such item. The Parties shall timely meet and confer in good faith in an effort to resolve all questions, concerns, and disputes. Any budget item not specifically identified in the timely-exchanged written list of objections that includes the specific basis for each objection, shall be deemed approved. A blanket objection to the entire budget shall not preserve the party's right to object to budget items as provided herein. Pending agreement or dispute resolution (as noted below), unresolved items in the budgets that are not deemed approved as provided herein shall not be subject to allocation but may be included in the listing-party's budget as the sole expense of that party. Remaining disputes shall be resolved by binding Fast Track arbitration under section II.G.1. Each party shall pay its respective share of the final combined budgeted costs under this section II.D.1.a.(1), subject to reconciliation and true-up as provided in section II.D.4.b. On the Effective Date, the Parties' initial allocated share of such combined budgeted costs shall be fifty-three (53%) CITY and forty-seven percent (47%) DISTRICT, which shall remain unchanged through June 30, 2019.

Upon not less than 15 days' written notice to the other party, either party may make budget amendments, respectively, to the CITY Combined Sewer Budget or the DISTRICT Combined Sewer Budget. The notice shall include the proposed budget amendment and an explanation of the reason for it. The budget amendments may be made by either party without approval from the other party, unless: (1) the amendment increases the total annual amount budgeted in either budget; (2) increases Direct Costs in any line item within a budget by more than the dollar limit specified in Ukiah City Code Section 1522.B.1, as revised by Resolution No. 2012-13, currently \$30,000, or any successor resolution; (3) increases any Indirect Cost; or (4) adds or subtracts line items within a budget. Either party may object to a budget amendment that does not require approval as set forth above by giving written notice of its objection and the reasons therefor within 15 days of the date notice of the budget amendment was given. If the objection is not resolved within fifteen (15) days after notice of the objection is given, the dispute shall be subject to Fast Track arbitration under Section II.G.1. Approval of the other party shall be required for a budget amendment that: (1) increases the total annual amount budgeted in either budget; (2) increases Direct Costs in any line item within a budget by more than the dollar limit specified in Ukiah City Code Section 1522.B.1, as revised by Resolution No. 2012-13, currently \$30,000, or any successor resolution; (3) increases any Indirect Cost; or, (4) adds or subtracts line items within a budget. The process for requesting budget amendments requiring approval shall be the same process detailed in the preceding paragraph for the annual budget after notice of the budget amendment is given. In an emergency where a budget amendment is necessary to address an emergency condition which, if not addressed immediately could result in personal injury, property damage or violation of waste discharge requirements or other laws or regulations, such budget amendments may be made without approval, but shall remain subject to the notice, objection, informal resolution, and Fast-Track arbitration provisions otherwise set forth in this paragraph.

Commencing July 1, 2019, or as soon thereafter as any disputes over the Allocation Methodology are resolved by agreement or Fast Track arbitration, and on July 1 of each year thereafter, the allocation of such combined budgeted costs shall be adjusted and based on each party's proportionate use of the CWWTP as measured by water consumption and relative strength of sewage discharged to the CWWTP by each party's Customers. Water consumption shall be the average quantity of water used by such customers in the winter months (January, February, and March or some combination thereof) as determined from the records of the water system serving the Customer (e.g., at present, Millview, and Willow County Water Districts, the CITY and Regina Water Company). Relative strength shall be based on the class of connection—residential, minimum, low, moderate and high discharge commercial and industrial, or other—with each class assigned a numerical factor. The numerical factor so assigned shall be designed to fairly capture the relative strength of discharge of the class of connection as compared to other classes. Each Customer's water consumption shall be multiplied by the numerical factor assigned the Customer's Connection. The ratio of the sum of those calculations for the Parties' respective Customers and Connections shall be used to establish each party's proportionate use of the CWWTP for purpose of allocating combined budgeted costs for the next fiscal year under this section II.D.1.a. ("Allocation Methodology"). This calculation shall be performed annually within sixty (60) days of the date on which the referenced water consumption data is obtained. Within one (1) year of the Effective Date, the Parties shall meet and confer in good faith to establish the month or months to be utilized for the water consumption calculation (as it now stands, CITY uses January only and DISTRICT uses average consumption during January through March), the classes of connections, and the numerical factor to be assigned each connection class. The purpose of this provision is to arrive at a fair method to calculate the Parties' respective contribution of discharge for treatment in the CWWTP. If the Parties are unable to arrive at an agreement through this process, either party may initiate arbitration under section II.G.1 to resolve the dispute. The Allocation Methodology calculation, and all information and records on which it is based, shall be promptly exchanged between the Parties in a manner and medium that permits a timely review and analysis. The Parties shall meet and confer in good faith to resolve any disputes related to the calculations within 45 days of the exchange. If the dispute persists after that time, it shall be resolved through dispute resolution under section II.G.1. As of the Effective Date, the Allocation Methodology shall be deemed as follows: CITY 53%; and, DISTRICT 47%.

While the CITY continues to perform billing and collection for the DISTRICT, the water use data shall be collected by the CITY and calculations shall be performed by CITY using the CITY's billing software. CITY shall promptly provide DISTRICT with the data used to make the calculations and disputes shall be resolved as provided in the preceding paragraph. DISTRICT may, but is not required to, perform its own calculations and provide them to CITY, which the CITY may, but is not required to use, when determining customers' sewer bills for the fiscal year. At such time that either party gives notice of discontinuance under Section II.B.2, the Parties shall meet and confer to devise a method for jointly performing the calculations for the Allocation Methodology, the purpose of which is to promote continuity since both CITY and DISTRICT would then be performing billing and collection functions and, additionally, calculations for the Allocation Methodology. If they have failed to agree on the method within sixty (60) days after such notice has been given, the matter shall be resolved through dispute resolution under Section II.G.1. Nothing in this provision shall be deemed to alter, modify, or limit the DISTRICT's right

under this Agreement to receive records and information under section II.B.1 or assume its own billing and collection functions.

The proportion of water consumption and relative strength of discharge attributable to the Parties, respectively, as determined by the Allocation Methodology each year shall, in turn, be that party's allocated share of such combined budgeted costs for the next fiscal year. Commencing with the 2020 fiscal year, the Parties may mutually select a neutral third-party professional to perform an allocation study, the purpose of which would be to assess the Parties' allocation of Indirect Costs to the Combined CITY/DISTRICT Sewer System and thereby aid the budget process prescribed by this Agreement.

**(2) DSS & CSS Cost Segregation.** As further provided in this Section D.1.a.(2), CITY shall segregate and separately track the costs for the CWWTP, Trunk Line, CSS, and DSS, respectively, with all information, materials, analysis, and other supporting data bearing on the matter to be timely provided to DISTRICT. Within one (1) year of the Effective Date of this Agreement, the Parties shall make a good faith effort to agree on the costs of the DSS and the CSS to be tracked, the manner in which said segregated costs are to be tracked and how and what information, materials, analysis, and other supporting data is to be shared on a continuous basis. If they fail to agree within said time period, either party may initiate Fast Track arbitration under section II.G.1 to resolve the dispute. The purpose of this provision is to: assess the costs of the CSS and DSS, respectively, separate and apart from the other costs of the Combined CITY/DISTRICT Sewer System; and, to assess whether a material deviation over a mutually agreed period of time would result in a material deviation from the allocation of costs using the Allocation Methodology if each party's share of operations and maintenance costs of the collection systems (DSS and CSS) absorbed only the costs of that party's collection system and not those costs of the other party's collection system). The Parties may use this information derived from the assessments to determine whether they want to change the method of apportioning these costs. If a material deviation results, the Parties shall meet and confer in an effort to appropriately modify the Allocation Methodology in light of the deviation and if within ninety (90) days of the commencement of those efforts the Parties fail to reach an agreement, either party may within sixty (60) days thereof initiate arbitration under section II.G.1.

**b. Exclusions, Exceptions & Other Adjustments to the Cost Allocation.** Notwithstanding the terms above in section II.D.1.a, certain exclusions and exceptions to the cost allocation referenced there shall apply.

**(1) Customers and Connections Excluded from Allocation Methodology.** The Allocation Methodology shall exclude costs associated with the CWWTP for DISTRICT Customers or Connections who, or which, has wastewater treated by a DRWWTP or by means other than the CWWTP and, to the extent the CITY does not perform such functions for those Customers or Connections, costs associated with billing and collection or operations and maintenance functions.

**(2) Customers and Connections Transferred.** In the event a Customer or Connection of one party is transferred from that party's sewer-service jurisdictional boundaries to that of the other party ("Receiving Party"), said Customer's / Connection's water

consumption and relative strength of sewage discharge, used to calculate each party's proportionate use of the Combined CITY/DISTRICT Sewer System in order to allocate costs in accordance with the Allocation Methodology, described above in section II.D.1.a.(1), shall be assigned to the Receiving Party effective on, and prorated to, the date of transfer.

**(3) Billing & Collection Services Costs.** In accordance with section II.B, in the event DISTRICT assumes its own billing and collection services, whether in whole or part: CITY shall be exclusively responsible for one hundred percent (100%) of all costs, however characterized, for or associated with billing and collection services; CITY shall be prohibited from charging DISTRICT for any share of costs, however characterized, for or associated with billing and collection services; and, such costs shall not be considered either a Direct Cost or Indirect Cost or otherwise included among those costs subject to allocation between the Parties. However, in the event DISTRICT only partially assumes its own billing and collection services and CITY continues providing such services in part for DISTRICT, then in order to account for DISTRICT's share of the Combined CITY/DISTRICT Sewer System billing and collection services costs, as budgeted (or segregated) in accordance with section II.D.1.a.(1)(2) (in either event subject to the Indirect Costs limitation set forth in section II.D.1.a.(1)) it shall pay an amount of such costs equal to that ratio which the total number of DISTRICT Connections that then remains subject to CITY's billing and collection services bears to the total number of all sewer Connections within the Combined CITY/DISTRICT Sewer System then subject to CITY's billing and collection services.

**(4) Costs Associated with Operations and Maintenance of CSS and DSS.** In accordance with section II.C., in the event DISTRICT assumes operations and maintenance of the DSS, whether in whole or in part: CITY shall be exclusively responsible for one hundred percent (100%) of all costs, however characterized, for or associated with the CSS; CITY shall be prohibited from charging DISTRICT for any share of costs, however characterized, for or associated with operations and maintenance of the CSS or DSS; and, no such costs for or associated with operations and maintenance of the CSS shall be considered either a Direct Cost or Indirect Cost or otherwise included among those costs subject to allocation between the Parties (i.e. the costs otherwise subject to allocation under this Agreement shall be limited to Direct Costs and Indirect Costs (subject to the limitations in section II.D.1.a.) of the CWWTP and Trunk Line). However, in the event DISTRICT only partially assumes its own operations and maintenance of the DSS and CITY continues providing such services in part for DISTRICT within the DSS, then in order to account for DISTRICT's share of costs associated with CITY's continued operations and maintenance within the DSS, DISTRICT shall pay a share of Direct Costs and Indirect Costs (subject to the limitations in section II.D.1.a.) for the operations and maintenance of that portion of the DSS for which CITY continues providing such services, with the costs subject to such allocation being as budgeted or segregated in accordance with section II.D.1.a.(1)(2), conditioned on the Indirect Costs limitation set forth in section II.D.1.a.(1). If the DISTRICT only assumes a portion of the operation and maintenance of the DSS: its share of those costs shall be the result of an equation where the numerator is the total water consumption and relative strength of discharge to the CWWTP sourced from those DISTRICT Customers located in the portion of the DSS for which CITY continues providing such services and the denominator is the total water consumption and relative strength of discharge to the CWWTP from such DISTRICT Customers and all CITY Customers; or, if segregated under section II.D.1.a.(2), its share of those costs shall be limited to

the costs properly segregated to the remaining portion of the DSS for which CITY continues providing operation and maintenance services.

**(5) Capital Improvement Costs Excluded.** Notwithstanding any other provision contained herein, the shared costs subject to allocation under section II.D.1. shall not include Capital Improvement costs, except as authorized in Section II.D.3. Allocation of Capital Improvement costs shall be made in accordance with section II.D.3.

**(6) Recycled Water Project.** CITY approved a recycled water project to be constructed in four phases. The CITY represents that it: has received a combination of loan and grant funds under Proposition 1 from the California Water Resources Control Board (“Water Board”) for estimated project costs up to \$32,085,000.00 of which \$10,276,000.00 is estimated to be a grant; the estimated amount of principal due to the State Water Board under the Installment Sale Agreement is \$21,809,000.00; the CITY has entered a contract with Ghilotti Construction to construct phases 1-3 of the recycled water project for \$22,357,358; a change order was subsequently approved for approximately \$4,000,000 for an expanded chlorine contact basin at the CWWTP; the loan from the Water Board is secured and payable from the CITY’s water utility, but will dispose of treated wastewater without discharging that water to percolation ponds or directly to the Russian River as well as produce recycled water for irrigation use; and, the CITY anticipates applying for additional funding from the Water Board as loan and grant funds to complete phase 4 at an estimated cost of \$20,000,000. Commencing in fiscal year 2019-2020, the CITY intends to charge the wastewater system for the cost of disposing of wastewater through the recycled water project and, therefore, to include those costs in the proposed CITY Combined Sewer Budget, in accordance with and subject to Section II.D.1 and II.D.3. The CITY agrees that costs, however characterized, related to the recycled water project shall only be included in the combined final sewer system budget of the Parties in compliance with this Agreement and law, including the California Constitution (e.g. Proposition 218 [Cal. Const., Art. XIII.D]). The DISTRICT retains its rights to dispute including any cost, whether sewage disposal (i.e. operations and maintenance) or Capital Improvement, related to the recycled water project, or any portion or amount thereof, as a cost subject to allocation between the Parties under this Agreement. Unresolved disputes shall be subject to the procedures and dispute resolution provisions in Section II.D.1.

## **2. Bond Debt Service**

**a. Background.** In Amendment No. 2, the Parties agreed it was necessary to increase the CWWTP's treatment capacity as it then existed (Capacity Project) and to rehabilitate and upgrade the CWWTP as it then existed (Upgrade/Rehabilitation Project). See Recital 6 for a description of the 2006 Bond transaction. The two projects were funded with \$75,060,000 from the 2006 Bonds. In Amendment No. 2, the Parties agreed to allocate those costs of the two projects as follows: Capacity Project—DISTRICT 65% and CITY 35%; and, Upgrade/Rehabilitation Project—based on the ratio of CITY and DISTRICT ESSUs as determined and adjusted annually.

A dispute has arisen between the Parties concerning the percentage of debt service allocated to the Upgrade/Rehabilitation Project and the Capacity Project. To resolve that dispute, the Parties agree to apportion 74.1586% of the debt service to the Upgrade/Rehabilitation Project

and 25.8414% to the Capacity Project. Based on that, the Installment Payments shall be calculated as provided in section II.D.2.b.

**b. Installment Payments.** Subject to the terms and conditions of the Refinancing:

(1) In fiscal years 2018-2019 and 2019-2020, the DISTRICT shall pay 52% and the CITY 48% of the combined debt service for the Upgrade/Rehabilitation Project and Capacity Project. Commencing in fiscal years 2020 and in subsequent fiscal years, the CITY and the DISTRICT shall pay their respective share of the combined debt service as provided in sections II.D.2.b.(2)-(3).

(2) **Adjustment in Allocation of Capacity Project Installment Payment Obligations.** The Parties' respective obligations to pay Installment Payments associated with the Capacity Project shall be proportionately adjusted from 65% DISTRICT and 35% CITY based on changes in the allocated share of Capacity Project ESSUs by: any transfer by one party to the other of any number of the transferring party's remaining Capacity Project ESSUs as described in section II.E; and/or, DISTRICT's transfer to CITY of ESSUs as described in section II.F. The adjustment shall take effect immediately upon any such transfer(s), with the Parties' respective obligations for Installment Payments associated with the Capacity Project prorated accordingly.

(3) **Adjustment in Allocation of Rehabilitation / Upgrade Project Installment Payments.** The Parties respective obligations for the Installment Payments associated with the Upgrade/Rehabilitation Project shall be that party's proportionate share of water consumption and relative strength of sewage discharge to the CWWTP by the Parties' respective Customers, as determined in accordance with the cost allocation and Allocation Methodology terms, including exclusions and exceptions, in section II.D.1., as annually adjusted.

**c. Bond Debt Refinancing.** The Parties shall use best efforts to close the Refinancing as soon as possible. CITY and DISTRICT shall make a good faith effort to complete the Refinancing to obtain the most favorable debt service savings obtainable and to accommodate the DISTRICT's elections and to apportion debt service in accordance with this Agreement. DISTRICT and CITY will work cooperatively and in a timely manner with one another in making those efforts to maximize the benefits of any Refinancing.

**d. Limitations on DISTRICT Assumption and CITY Discontinuance of Functions:** The following applies regarding the DISTRICT's assumption of and CITY's discontinuance of its own billing and collection or operations and maintenance functions under sections II.B.2 and II.C.1.b:

(1) In the event of any Refinancing:

(a) The DISTRICT may assume its own billing and collection or operations and maintenance functions, as authorized in this Agreement, if not otherwise prohibited under the applicable terms of the Refinancing and in accordance with the applicable terms of the Refinancing;

(b) DISTRICT reserves its right to refinance its portion of the bond indebtedness with its own debt unless otherwise expressly prohibited / limited in an agreement made part of such Refinancing of which DISTRICT is a party and signatory; and,

(c) In pursuing the current Refinancing jointly, CITY and DISTRICT agree that they will include each other in all written and oral communications to or from third parties, unless the communication is subject to the attorney/client privilege or a third party requires separate communications, in which case the non-communicating party shall be given notice and the purpose thereof. The Parties agree to make good faith efforts to undertake the Refinancing in a timely manner, acknowledging the same will require an unconditional commitment by both CITY and DISTRICT to pay their respective share of the debt service for the Refinancing in accordance, and in keeping, with terms of the Refinancing agreements and this Agreement to obtain the most favorable bond rating and interest rate available under the market conditions for tax free revenue bonds existing at the time of the Refinancing.

(2) In the absence of a Refinancing, DISTRICT's assumption of its billing and collecting and/or operations and maintenance functions while the 2006 Bonds are outstanding is subject to the following:

(a) DISTRICT and CITY jointly give the Association of Bay Area Governments ("ABAG"), Syncora Guarantee, Inc., the Bond Trustee and each rating agency then rating the 2006 Bonds ("rating agencies") the form of an amendment to the Financing Agreement and a copy of this Agreement together with written notice that:

i. Under Section II.B.2, DISTRICT may elect to take over all or a portion of its billing and collecting functions for its ratepayers on a date described in the notice (that is at least one hundred eighty (180) days after the notice in section II.B.2. is provided);

ii. Under this Agreement and the proposed amendment to the Financing Agreement, if DISTRICT elects to take over all or a portion of its billing and collection functions for its ratepayers, the DISTRICT will pledge to the CITY or the Bond Trustee its Net Revenues (as defined in the proposed amendment to the Financing Agreement) and DISTRICT will establish a wastewater fund, securing repayment of the 2006 Bonds, into which it shall be required to deposit all its Gross Revenues (as defined in the proposed amendment to the Financing Agreement) and from which it will agree to make District Payments as required under the Financing Agreement and to otherwise comply with the payment priorities required by Section 4.5(b) of the Installment Sales Agreement;

iii. The proposed amendment to the Financing Agreement will provide that ABAG, Syncora Guarantee, Inc., and Bond Trustee are third-party beneficiaries to the DISTRICT's pledge;

iv. No other amendments to the Financing Agreement are contemplated; and

v. DISTRICT and CITY request (1) written consent from Syncora to the proposed amendments to the Financing Agreement and the DISTRICT's assumption of billing and collection functions or operations and maintenance of its wastewater collection system, as authorized by this Agreement, (2) written confirmation from the ABAG and the Bond Trustee that the proposed amendments to the Financing Agreement and the DISTRICT's assumption of billing and collection functions or operations and maintenance of its wastewater system, as authorized by this Agreement will not materially adversely affect the interests of the Bond Owners in violation of Section 5.12 of the Installment Sale Agreement, and (3) a determination from each of the rating agencies that the proposed amendments to the Financing Agreement and the DISTRICT's assumption of billing and collection functions or operations and maintenance of its wastewater collection system, as authorized by this Agreement, will not, in and of themselves, cause any rating on the 2006 Bonds to be lowered, in each case, within sixty (60) days after the written notice was given. ABAG consent is not required, if ABAG has assigned its right to consent to changes to the Financing Agreement and the Participation Agreement to the Bond Trustee.

(b) CITY shall not intentionally encourage non-consent or an objection by rating agencies, ABAG, Syncora Guarantee, Inc. or the Bond Trustee. This shall not prohibit the CITY from responding accurately and completely to requests for information from the rating agencies, ABAG, Syncora Guarantee, Inc. or the Bond Trustee. All communications with the parties to whom notice is given under this provision shall at all times include both CITY and DISTRICT. The Parties shall make good faith efforts to obtain necessary consents.

(c) If the written consents/confirmations of Syncora Guarantee, Inc. and the Bond Trustee are obtained and a determination from each of the rating agencies has been made that the DISTRICT's assumption of billing and collection functions and/or the operation and maintenance of its wastewater collection system, as authorized by this Agreement, and the proposed amendments to the Financing Agreement will not, in and of themselves, cause any rating on the 2006 Bonds to be lowered, then CITY shall promptly execute the amendments to the Financing Agreement with the DISTRICT (to include any other covenants required by such entities and agencies, with the addition of any such covenants not to be unreasonably withheld by the Parties in consideration of the terms and purposes of this Agreement), which shall in any event be within thirty (30) days of receipt of such consents and rating agency determination.

(d) If the consents/confirmations of Syncora Guarantee, Inc. and the Bond Trustee are not obtained and a determination from each of the rating agencies has not been made that the DISTRICT's assumption of billing and collection functions or the operation and maintenance of its wastewater collection system, as authorized by this Agreement, and the proposed amendments to the Financing Agreement will not, in and of themselves, cause any rating on the 2006 Bonds to be lowered, and if the DISTRICT takes the position that such lack of consents or determination was unreasonable, the Parties shall, at DISTRICT's election, cooperate to facilitate a declaratory relief action or other legal determination on the subject by the DISTRICT with DISTRICT bearing all fees, costs, and expenses associated therewith, including fees of attorneys, experts, consultants, and investigators and all other litigation expenses of the DISTRICT and the CITY (provided that any such expenses incurred by the CITY are necessarily and reasonably incurred) and any other costs, damages or expenses incurred by the CITY in

cooperating with such an action. If any such determination or action cannot be brought, unless the CITY is named as a party, the CITY may be named as a party.

(e) In the absence of (1) written approval by Syncora Guarantee, Inc. and the Bond Trustee and the required determination by each of the rating agencies, or (2) a final, non-appealable Declaratory Judgment that such approvals and rating determinations were unreasonably withheld, DISTRICT may not take over its billing and collections or operation and maintenance of the DSS.

(f) If the required written consents / confirmations / determinations are given or obtained, and the DISTRICT elects to discontinue the CITY's billing and collection and/or operations and maintenance functions, the DISTRICT shall indemnify and defend the CITY from any subsequent claim or lawsuit by an owner or owners of 2006 Bonds, including any class claim on their behalf, which seeks damages or other legal remedies against the CITY based on the amendments to the Participation Agreement that allow and govern the DISTRICT's assumption of its billing and collection function or operation and maintenance of its wastewater collection facilities as authorized by this Agreement or the approved amendments to the Financing Agreement. Upon notice to DISTRICT of the claim or lawsuit from CITY, the DISTRICT shall assume and pay all costs, damages or liability arising out of any such claim or lawsuit. In the event that any such claim or lawsuit is filed or served on the CITY, the DISTRICT shall provide for the defense of that claim or lawsuit through legal counsel procured by DISTRICT and approved by CITY, which approval shall not be unreasonably withheld, and shall pay all of the defense costs, including, but not limited to, fees of attorneys, investigators, experts, and consultants, and all other litigation related expenses. CITY shall fully and promptly cooperate with DISTRICT in undertaking any such undertaking. The DISTRICT shall pay the full cost of any settlement or judgment resulting from any such claim or lawsuit. With respect to any other claim that the CITY breached section 5.12 of the 2006 Installment Sale Agreement by agreeing to the terms of this Agreement, the DISTRICT and CITY agree to share the costs of defense and payment of any settlement or judgment as they shall agree, subject to dispute resolution under section II.G.2.

### **3. Capital Improvement Costs.**

**a. Shared Capital Improvement Costs.** Subject to section II.D.3.a.(1) and section II.D.1.b.(6), Capital Improvement costs for the CWWTP, DSS, or CSS that benefit both the DISTRICT and CITY shall be subject to allocation between the Parties as provided in this section II.D.3.a. Capital Improvement costs for the CWWTP may be included in the CITY's Sewer System Budget so long as they don't exceed \$200,000.00 in any fiscal year and reasonable Capital Improvement costs for the Trunk Line may be included in the City Sewer Services Budget and/or DISTRICT Budget, all in accordance with Section D.1. subject to cost allocation using the Allocation Methodology. Nothing in this section shall be deemed to modify section II.D.1.b.(6). Other Capital Improvements to the CWWTP ("Other CWWTP Capital Improvements"), other Trunk Line Capital Improvements, or any Capital Improvements to the DSS or CSS that are claimed to benefit both Parties shall be approved in writing before such costs are required to be shared. Absent such approval, either party may initiate the procedures in section II.D.3.a.(1) by providing written notice of the same to the other. Capital Improvement costs that are claimed to benefit both Parties and that are incurred in emergency or other circumstances, the timing of which

does not reasonably and practically allow for prior written approval, shall be resolved through the procedures in section II.D.3.a.(1), unless otherwise agreed.

(1) **Further Required Negotiations and Arbitration.** Prior to charging a party with any share of an unapproved Capital Improvement cost pursuant to section II.D.3.a, including Other CWWTP Capital Improvements, other Trunk Line Capital Improvements, or any Capital Improvements to the DSS or CSS that are claimed to benefit both Parties, the Parties shall promptly: exchange all information and materials associated with such Capital Improvement costs to allow the other to fully and completely review, evaluate, and analyze the Capital Improvement and its costs; and, subsequently, meet to negotiate the detailed terms for sharing the Capital Improvement cost in accordance with this Agreement. At the request of either party, the DISTRICT's Board and CITY's City Council shall meet in joint session(s), as they shall agree. If they fail to reach agreement within sixty (60) days, or such longer period as agreed by the Parties, of a written request from the party seeking to share the cost of the Capital Improvement, they shall undertake the dispute resolution procedure as provided in Section II.G.1.

**b. Capital Improvements to DSS and CSS.** Except as provided in this Agreement, any Capital Improvement to the DSS, regardless of the percentage increase in the asset's value or useful life, shall be entirely paid by the DISTRICT, unless the Parties agree otherwise as to a specific project, and a Capital Improvement to the CSS, regardless of the percentage increase in the asset's value or useful life, shall be paid entirely by the CITY, unless the parties agree otherwise as to a specific project. At least ninety (90) days prior to a party undertaking a Capital Improvement that such party intends will be paid in whole or part by the other party, or within ninety (90) days of performing the work in the case of emergencies or other circumstances, the timing of which does not reasonably and practically allow for prior written approval, the undertaking party shall give written notice to the other party. Where a party contends that a Capital Improvement to the DSS or CSS should not be undertaken as noticed or that it benefits both parties and should be jointly paid, resolution of any disagreement between the Parties concerning that Capital Improvement shall be subject to Section II.D.3.a.(1), above.

**c. Capital Improvements to the Trunk Line.** Capital Improvement costs to the Trunk Line shall be shared, regardless of the improvement's physical location, in accordance with the Allocation Methodology; i.e., such costs shall be shared notwithstanding that an improvement to the Trunk Line is within, or the majority of it is within, the Sewer services jurisdictional boundaries of one party as opposed to the other. However, the capital improvements must be approved in accordance with Section II.D.3.

#### **4. Reporting Allocated Costs.**

**a. Budgeted Costs.** Except as otherwise required by the Refinancing, within ten (10) days of the end of each month, commencing in the third full month following the Effective Date, the CITY shall give the DISTRICT a statement showing the approved expenses, actually incurred, in the preceding month under the CITY Combined Sewer Budget plus 1/12 of the DISTRICT's share of debt service on outstanding bonds, and the DISTRICT revenue received in that month. DISTRICT revenue shall be the sum of all sewer-related revenues received from Customers and Connections within the DISTRICT's sewer-service jurisdictional boundaries. By

the same deadline, the DISTRICT shall give the CITY a statement showing the approved expenses, actually incurred, in the preceding month under the DISTRICT Combined Sewer Budget. The respective statements shall append reports from the Parties accounting systems of the actual expenses incurred and percentage expended of each budgeted expense.

The DISTRICT's share of CITY's expenses shall be offset by the CITY's share of DISTRICT expenses as reported and then 1/12 of the DISTRICT's share of annual bond debt service shall be added to that figure. ("DISTRICT's Net Expenses"). The DISTRICT's Net Expenses shall be deducted from DISTRICT's revenue received in the same month. If a surplus results, the CITY shall remit and transfer the surplus sum to DISTRICT. If a deficiency results, the DISTRICT shall remit and transfer the deficient sum to CITY. All such remittances by the CITY or the DISTRICT must be calculated and paid quarterly, commencing January 1, 2019. The parties must receive the payments within 15 days of quarter end, even if they dispute the statement. Any disputes must be resolved during the true up process as provided in Section II.D.4. If either party fails to make a timely payment, it shall be liable for interest on the unpaid balance of the amount due until paid in full at a monthly rate of 1.5%, not to exceed the maximum rate allowed by law.

**b. Actual Cost True Up.** The purpose of this provision is to allow the Parties to verify whether the other party's claimed charges were budgeted and actually incurred. If a party disputes a statement from the other party, the dispute shall not excuse the party from paying the amount in the statement, and the Parties shall undertake the Fast Track dispute resolution process in section II.G.1. The party prevailing through dispute resolution shall receive a refund from the other party of any overpayment, including any interest earned on the overpaid amount, or the amount of earnings the prevailing party demonstrates was lost on the overpaid amount, from the date paid until refunded.

Not later than 180 days following the end of the fiscal year, CITY and DISTRICT shall each provide the other with copies of their respective audited financial statements. The deadline for exchanging audits may be extended not more than twice by either party for up to an additional 90 days for each of the two extensions. Further, each will provide financial reports on its respective portions of the Combined CITY/DISTRICT Sewer System, derived from its financial reporting system(s), after all end-of-year and audit adjustments have been recorded, along with supporting materials and information requested in accordance with Section D.5., the purpose of which is to determine and reconcile actual costs incurred on items budgeted in accordance with section II.D.1. and II.D.3. Each party shall have sixty (60) days to review the audit and all supporting materials and information. A reconciliation of actual costs expended on budgeted items shall occur whereby each party shall be reimbursed for any amounts paid on such budgeted items that exceed actual cost; and, pay additional amounts on items for which the actual cost exceeded the budget, to the extent not already done. Any credits due from CITY shall, at DISTRICT's discretion, either be applied to reduce the amount billed to the DISTRICT based on the approved budget for the current fiscal year or refunded in whole or in part to DISTRICT within fifteen (15) days, and any amounts due to CITY from DISTRICT shall increase the amount invoiced to the DISTRICT based on the approved budget for the current fiscal year payable in accordance with Section II.D.4.a. Disputes shall be subject to arbitration under section II.G.2.

c. While it continues the billing and collection functions for the DISTRICT, the CITY will apply DISTRICT revenue to DISTRICT's allocated share of costs under section II.D.1. and to DISTRICT's share of bond debt service, under section II.D.2., on a monthly basis, with payment of DISTRICT's share of bond debt service on a semi-annual basis unless otherwise required by the Refinancing. The provisions in this section II.D.4. shall continue to apply, except to the extent they are inconsistent with the terms of the Refinancing. DISTRICT funds held by the CITY shall receive a proportionate share of any returns earned on funds held by the CITY.

**5. Information Sharing.** Commencing six (6) months after the Effective Date, for all funds/accounts associated with revenue and expenditures, including transfers, of the Combined CITY/DISTRICT Sewer System, the Parties shall provide each other:

a. On a monthly basis with: (1) a summary general ledger report containing debit and credit balances of the current month and year-to-date; (2) a detail general ledger report for the month.

b. On a quarterly basis with a summary general ledger report with debit and credit balances of the current quarter and year-to-date; and,

c. On an annual basis with: (1) the combining trial balance through the reporting period; (2) basic financial statements, to include (i) statement of net assets, (ii) statement of revenues, expenses, and changes in fund net assets and (iii) statement of cash flows; (3) all adjusting, post-closing, and audit adjustment journal entries; (4) details of all adjusting, post-closing, and audit adjustments; and, (5) copy of draft and final audited financial statements, including the required communication regarding internal controls over financial reporting.

In addition to any other information sharing requirements in this Agreement, each party shall, within ten (10) business days of any request by the other, provide access to any information or materials within the requestee's knowledge, custody or control, as may be reasonably requested and adequately described, to enable the requesting party to timely and fully evaluate, analyze, and verify the other's invoices / expenditures for the requesting party's share of allocated costs as provided in this section II.D., including, but not limited to, Direct Costs, Indirect Costs, water consumption and relative strength of discharge, billing, collection, Customers, Connections, ESSUs, financing, bond indebtedness, Refinancing (if done), and Capital Improvements.

**6. Rate Studies.** Unless otherwise agreed by the Parties, in fiscal year 2019-2020, and every fifth fiscal year thereafter, the CITY and DISTRICT shall undertake and share equally the cost of a rate study for the Combined CITY/DISTRICT Sewer System using a qualified consultant with expertise in compliance with Proposition 218 (Cal. Const., Article XIII.D.)

## **E. ALLOCATION OF REMAINING CWWTP CAPACITY-PROJECT CAPACITY.**

**1. Capacity Allocation.** In Amendment No. 2, the Parties agreed that the Capacity Project, inclusive of CEPT, increased the capacity of the CWWTP by 2,400 ESSUs of which DISTRICT is entitled to use sixty-five percent (65%), or 1,560 ESSUs (the "DISTRICT Dedicated Capacity"), and CITY is entitled to use thirty-five percent (35%), or 840 ESSUs (the "CITY Dedicated Capacity"). The Parties agree the DISTRICT owns the DISTRICT Dedicated Capacity

and the CITY owns the CITY Dedicated Capacity. The pre-Capacity Project wastewater treatment capacity (e.g. ESSUs) of the CWWTP has been used by the Parties, and the Parties agree to treat the unused Capacity Project ESSUs as the measure of the remaining wastewater treatment capacity in the CWWTP.

The Parties recognize that the North Coast Regional Water Quality Control Board (“NCRWQCB”) uses dry weather flow to determine the treatment capacity of the WWTP and has established its discharge limits, in part, based thereon. ESSUs are used to estimate the amount of treatment capacity consumed by a sewer connection. If the 2,400 ESSUs have been used, but the dry weather flow into the CWWTP is below the amount authorized in the Waste Discharge Permit for the CWWTP then in effect, the Parties shall meet and confer for not more than ninety (90) days, unless they agree to extend the time, to determine how to allocate any remaining treatment capacity between them. If they fail to agree within that time, either party may initiate dispute resolution under Section II.G.1. The purpose of this provision is to provide for allocation of any such additional remaining treatment capacity in a manner consistent with this Agreement.

A dispute between the Parties currently exists concerning (a) the quantity of ESSUs actually used to date by each party from the 2,400 ESSUs made available through the Capacity Project and, in turn, (b) the remaining ESSUs available to each party through the Capacity Project. Subject to the limits on the remedies available to the Parties as stated below in this Section II.E.1, this dispute is excluded from the waiver and release of claims resulting from the Settlement Agreement (Exhibit 1 hereto.) To resolve this dispute, the Parties shall promptly exchange all available information and materials related to the dispute and otherwise diligently work to resolve it. In the event a signed, written, agreement on this dispute is not reached within one hundred eighty (180) days of the Effective Date, the matter may be submitted by either or both parties to binding arbitration under section II.G.1. The resolution of the dispute by agreement or arbitration shall be limited to determining the remaining ESSUs available to each Party for new connections and to establishing a record of each Connection having a Capacity Project ESSU and the number of such ESSUs attributable to each such connection. All other remedies associated the resolution of this dispute, including damages and equitable relief are subject to the release of claims in accordance with the Settlement Agreement, except that, in the event actual ESSU capacity of the CITY or the DISTRICT, as determined by agreement or arbitration, exceeds its allocated quantity of Capacity Project ESSUs, then there shall be an adjustment of remaining Capacity Project ESSUs to maintain the ratio of such capacity to which each party is entitled as specified above. If such an adjustment is not possible, then the imbalance in ESSUs shall be treated as if it were a transfer under section II.F.4. with corresponding payments and reallocations.

Except as otherwise provided in this Agreement or agreed to in writing by the Parties, neither party may add new ESSUs for treatment in the CWWTP beyond their respective allocated share of remaining Capacity Project ESSUs as determined in the first paragraph of this section (or, regarding non-Capacity Project capacity, as determined in section II.F). The Parties may agree to transfer all or any portion of one party’s allocated share of remaining Capacity Project ESSUs to the other party with a corresponding adjustment to their respective remaining capacity in the CWWTP and reallocation of Installment Payments associated with the Capacity Project (subject to Refinancing agreements), and on terms and conditions otherwise agreed.

**2. Calculating Consumption of Remaining ESSUs.** Each party may add ESSUs for treatment in the CWWTP up to its remaining allocated share of Capacity Project ESSUs described in section II.E.1. ESSUs may be used by the creation of a new Connection within the sewer-service jurisdictional boundaries of either party or the remodel or change in use of a structure with an existing Connection within said boundaries. In most cases a remodel or change in use will increase the ESSUs consumed by the Connection (which increases the ESSUs then assigned to that Connection). Once the ESSU attributable to a new Connection or the remodel or change in use of a structure with an existing Connection is determined—in accordance with the procedures below—that party’s share of remaining ESSUs that may be added for treatment in the CWWTP shall be increased or reduced by a corresponding amount.

For residential properties, ESSUs will be calculated based on the number of bedrooms in the residence. ESSUs will be assigned as follows:

- One Bedroom Residence: 0.9 ESSUs
- Two Bedroom Residence: 1.0 ESSUs
- Three Bedroom Residence: 1.1 ESSUs
- For each additional bedroom: Additional 0.1 ESSUs

For commercial and industrial properties, all such new ESSUs shall be calculated using drainage fixture unit (DFU) values as set in Chapter 7 Sanitary Drainage, Table 702.1 of the 2016 California Plumbing Code. For commercial and industrial accounts 26 DFUs equal 1 ESSU.

Each party shall have the right to set the ESSUs to be assigned to such a new Connection, or to an existing Connection upon a remodel or change in use, in a manner that deviates from the referenced DFU calculation if reasonably required to properly capture the actual anticipated discharge characteristics of the Connection, such as flow, biochemical oxygen demand (BOD), total suspended solids, and other sewage characteristics. Any such deviations shall be based on ESSUs for commercial and industrial properties having an annual average daily wastewater flow of 210 gallons per day, with BOD and TSS concentrations of 200 mg/L. When ESSUs are to be calculated, the following formula shall be used:

$$\text{Calculated ESSUs} = [(\text{Expected TSS in mg/L}) / (200 \text{ mg/L}) * (1/3)] + [(\text{Expected BOD in mg/L}) / (200 \text{ mg/L}) * (1/3)] + [(\text{Expected annual average flow in gpd}) / (210 \text{ gpd}) * (1/3)]$$

For commercial and industrial Connections, at no point will the components used to calculate ESSUs be a value that is less than 200 mg-BOD/L, 200 mg TSS/L, or 210 gpd of annual average flow. Any deviations from the ESSU calculation method for commercial or industrial shall be considered on a case by case basis subject to the following process.

When a building permit application is filed with the CITY Building Department or the Mendocino County Building Department for a (1) project that will require the payment of a Connection fee, or (2) the remodel or change in use of a structure with an existing Connection, the building department will refer the application to the CITY to prepare an assessment of the number of ESSUs and the associated fee for that property. By the end of business on the day the assessment

is completed, the CITY shall forward by email a copy of the proposed permit and the assessment (inclusive of the calculation and all supporting details, facts, and information used to perform the calculation and all documents supporting and relating to the calculation) of ESSUs to the DISTRICT. CITY shall provide information to DISTRICT either by certified mail or tracked email in order to verify delivery and receipt. Within ten (10) business days of its receipt of the permit application and the assessment from the CITY, the DISTRICT shall respond to the CITY with any questions, disputes, or modifications to the assessment or Connection fee. If CITY and DISTRICT do not concur on the assessment or Connection fee, the CITY and DISTRICT shall meet and/or exchange information as necessary. If the Parties fail to resolve the dispute within ten (10) business days of the CITY's receipt of the DISTRICT's written questions or disputes, or such further time as the Parties may agree, the dispute shall be resolved as provided in Section II.G.1. Failure of the District to respond to the receipt of the assessment and Connection fee sent by the CITY will be assumed to mean that the DISTRICT does not object to the CITY's assessment or the Connection fee.

**F. CHANGES OF ORGANIZATION AND DISTRICT REGIONAL WASTE WATER TREATMENT PLANTS (DRWWTP).**

**1. Changes of Organization.** Subject to and in compliance with the requirements of the Refinancing and Refinancing agreements and, pending Refinancing, the agreements associated with the 2006 Bonds, either party may apply to and obtain a decision by the Mendocino Local Agency Formation Commission ("LAFCO") for a change of organization using the procedures in the District Reorganization Act ("DRA"; Gov't Code §56000 et seq., as amended) and as otherwise allowed by law, including, but not limited to, any and all amendments to a sphere of influence, annexations and detachments, including, but not limited to, detachment from the DISTRICT of all or any portion of the Overlap Area. The filing by the CITY of an application—by itself—to LAFCO to detach all or any portion of the Overlap Area shall not be deemed a breach of this Agreement or the Participation Agreement. Nothing in this Section II.F. excuses the Parties from exhausting their administrative or judicial remedies as required by law and nothing herein impairs the Parties' rights to seek relief as allowed by law. Nothing herein shall be deemed consent by DISTRICT of or for any such detachment or by either party of any other proposed change of organization by the other party. Except as otherwise determined by LAFCO in acting on a petition or application for a change of organization or by other lawful procedures, both Parties reserve their right to provide sewer service within their respective sewer-service boundaries as they now exist or may exist in the future.

**2. DRWWTP Development.** The DISTRICT does and shall have the right to apply for permits and take other action to establish one or more new wastewater treatment facilities and to construct, operate and maintain said facilities. Subject to and in compliance with the requirements of the Refinancing and Refinancing agreements, or once the Installment Payments allocated to DISTRICT are paid or defeased, the DISTRICT may divert DISTRICT Connections or Customers connected to the CWWTP to a DRWWTP or any other treatment facility in accordance with this Agreement.

**3. Obligation to meet and confer.** Both parties reserve their right to oppose the other party's application for a reorganization, including but not limited to detachment from the DISTRICT of all or any portion of the Overlap Area or the DISTRICT's development or operation of a DRWWTP, on any legal, equitable, or factual basis. Prior to taking action embraced by section II.F.1. or 2., the party intending to take such action shall give the other party at least sixty (60) days written notice of the same; such notice shall describe in detail the intended action and the anticipated effect of that action on this Agreement. If either party has objections or concerns about the other party's LAFCO application or the DISTRICT's proposal to establish a separate wastewater treatment facility, it will be required to notify the other party of those objections and concerns in writing and the Parties shall engage in good faith negotiations to resolve the other party's concerns. Either party may request and the Parties may schedule joint meetings of the DISTRICT's Board and CITY's City Council to address these concerns. However, those negotiations shall not delay or alter the LAFCO or DRWWTP process or procedures, except to the extent agreements are reached that affect the same. Subject to the legally required exhaustion of administrative or judicial remedies, unresolved disputes concerning reorganizations, which are not subject to the jurisdiction of LAFCO, or disputes concerning a DISTRICT proposal to establish or use a DRWWTP which are not subject to the jurisdiction of Mendocino County, the NCRWQCB or any other agency or regulatory body with approval authority over the project, shall be resolved according to the procedures in section II.G.2.

**4. Transfer of Capacity Project ESSU-Connections Through a Change of Organization or to a DRWWTP.** If a change in organization by one party ("Receiving Party") results in that party modifying its sewer-service jurisdictional boundaries to include, and which effectively transfers, Customers and Connections assigned Capacity Project ESSUs that were within the other party's ("Transferring Party") sewer-service jurisdictional boundaries, or if the DISTRICT transfers wastewater treatment services for a Connection assigned Capacity Project ESSUs within its sewer-service jurisdictional boundaries from the CWWTP to any DRWWTP (in which case DISTRICT is the Transferring Party and CITY the Receiving Party), and in either case assuming such a transfer is permitted under the terms of the Refinancing, or as to a transfer of a connection from the CWWTP to any DRWWTP, in the absence of Refinancing, upon payment or defeasement of the 2006 Bonds, then, subject to Section II.F.1.-2 and covenants imposed as part of the Refinancing, the following provisions shall apply.

**a. ESSU Numerical Value.** Each Connection so transferred shall be assigned a numerical ESSU value. As to an existing Connection, the number of ESSUs shall be as previously calculated, barring apparent error. The number of ESSUs assigned future connections shall be determined in accordance with section II.E.

**b. Payment of Transferred Connections Assigned Capacity Project ESSUs.** For any Connection assigned Capacity Project ESSUs transferred by the DISTRICT to a DRWWTP or other facility, the Receiving Party shall pay the Transferring Party the monetary sum ("the Calculated Amount") determined by multiplying (a) the number of ESSUs transferred by (b) the debt service paid for them by the Transferring Party to the date of transfer. If a Connection Fee was paid for the Capacity Project ESSUs before they are transferred, the Transferring Party shall pay the Receiving Party the amount by which the Connection Fee exceeds the Calculated Amount or the Receiving Party shall pay the Transferring Party the amount by which the

Calculated Amount exceeds the Connection Fee. Prior to any such transfer being effective, the Parties shall meet and confer in good faith to establish the terms on which such payment shall be made, with disputes concerning the same subject to binding Fast Track arbitration under section II.G.1. Regarding a change in organization, the Calculated Amount shall not apply to transfers of Connections assigned Capacity Project ESSUs. Nothing in this Agreement shall determine the Parties' right to payment or compensation otherwise upon a change in organization

**c. Effect of Transfer on Cost Allocation.** For any Customer or Connection so transferred, figures associated with any such Customer or Connection (water use and relative strength) that would otherwise be used in the Allocation Methodology to determine the Parties' respective share of costs subject to allocation, described in section II.D.1., and the adjustments to debt-service obligations (number of Capacity Project ESSUs assigned a transferred Connection), described in section II.D.2., shall be made and assigned to the Receiving Party, effective on, and prorated to, the date of transfer, subject to the terms of the agreements entered as part of the Refinancing (no such transfer shall be allowed unless permitted under, and done in accordance with, the terms of the Refinancing).

**d. Effect of Transfer on Remaining CWWTP Capacity Project Capacity Allocation.** Each Connection assigned a Capacity Project ESSU transferred by DISTRICT to a DRWWTP pursuant to this section II.F.4 shall result in a corresponding deduction to Transferring Party's allocated share, and an increase to Receiving Party's allocated share, of remaining CWWTP Capacity Project ESSUs as otherwise described in section II.E, effective on the date of transfer. A transfer of a Connection assigned a Capacity Project ESSUs resulting from a change in organization shall have *no effect* on the Parties' allocated share of the remaining CWWTP Capacity Project Allocation, including pursuant to section II.E.

**e. DISTRICT's Transfer of ESSUs Within CITY Limits.** In the event DISTRICT seeks to transfer a Connection (regardless of whether it is assigned Capacity Project ESSUs) that is within DISTRICT's sewer-service jurisdictional boundaries but also CITY's general jurisdictional boundaries (i.e. city limits), the transfer cannot occur unless the CITY approves the transfer, such approval not to be unreasonably withheld considering the advantages and disadvantages of using a DRWWTP to serve the connection against the impact of the transfer on the CITY's interest in providing sewer service within its city limits. The Parties shall promptly exchange all information and materials on the matter. If the CITY has failed to approve the transfer within sixty (60) days of DISTRICT giving the CITY a written request for such approval, the DISTRICT may commence dispute resolution under section II.G.1 so long as notice under said section II.G.1. is given within 120 days of the DISTRICT's written request for approval under this section.

**5. Transfer of Non-Capacity Project ESSUs:** If the DISTRICT transfers wastewater treatment services for a Connection *not* wholly assigned Capacity Project ESSUs within its sewer-service jurisdictional boundaries from the CWWTP to any DRWWTP or such a Connection is transferred from one party to the other through a change in organization, and in either case assuming such a transfer is permitted under the terms of the Refinancing, then, subject to section F.1-2 and the covenants imposed as part of the Refinancing, the following provisions shall apply:

**a. ESSU Numerical Value.** Each Connection so transferred shall be assigned a numerical ESSU value for purposes of determining remaining capacity in the CWWTP available to the party. That numerical value shall be determined in the same manner as for a Capacity Project ESSU in accordance with Section II.E. It is the Parties' understanding that there are no Non-Capacity Project Connections for which ESSUs have been calculated or assigned (to the extent the case is otherwise, as to an existing Connection, the number of ESSUs shall be as previously calculated, barring apparent error).

**b. Effect of Transfer on Cost Allocation.** To the extent a transfer is of *non*-Capacity Project ESSUs, figures associated with any such Customer or Connection (water use and relative strength) (prorated for non-Capacity Project ESSUs if the subject Connection is assigned both Capacity, and non-Capacity Project ESSUs) that would otherwise be used in the Allocation Methodology to determine the DISTRICT's respective share of costs subject to allocation, described in section II.D.1., shall be eliminated, and adjustments to debt-service obligations, described in section II.D.2, made, effective on, and prorated to, the date of transfer, subject to the terms of the agreements entered as part of the Refinancing (no such transfer shall be allowed unless permitted under, and done in accordance with, the terms of the Refinancing).

**c. Effect of Transfer on Remaining CWWTP Capacity Project Capacity.** Subject to section II.F.6., for any Customer or Connection so transferred, the number of *non*-Capacity Project ESSUs attributable to the same shall have *no effect* on the Parties' allocated share of the remaining CCWTP Capacity Project Allocation, including pursuant to section II.E.

**6. Use of CWWTP Capacity Following Transfers.** With respect to Capacity and non-Capacity Project ESSUs assigned to Connections or Customers transferred by DISTRICT to a DRWWTP ("Transferred ESSUs"), the resulting increased capacity of the CWWTP shall be allocated as follows. The remaining Capacity Project ESSUs of each party, not counting Transferred ESSUs, shall be used first by new Customers or Connections of the party. If a party has no more Capacity Project ESSUs to serve a Connection, the party may use Transferred ESSUs that have not been used by a new Connection. Transferred ESSUs may not be reserved by either party and shall be assigned and used in accordance with Section II.E.2. CITY shall pay DISTRICT for any Transferred ESSUs assigned to the new CITY connection the amount, if any, of debt service paid by DISTRICT for that ESSU (to the extent it is a Capacity Project ESSU or attributable to financing used to increase CWWTP plant capacity). Figures associated with any such Customer or Connection associated with a Transferred ESSU that would otherwise be used in the Allocation Methodology to determine the DISTRICT's share of costs subject to allocation, described in section II.D.1., and the adjustments to debt-service obligations, described in section II.D.2., shall be assigned to the CITY, effective on, and prorated to, the date of transfer, all of which are subject to the terms of the agreements entered as part of the Refinancing (no such transfer shall be allowed unless permitted under, and done in accordance with, the terms of the Refinancing or if the subject bond indebtedness is paid or defeased).

## G. ARBITRATION

**1. Fast-Track Alternative Dispute Resolution.** In the event a dispute arises between the Parties concerning the matters to which this section II.G.1. applies as referenced above, and the Parties are unable to resolve the dispute within the prescribed time periods in such sections, then either party may commence the Fast-Track alternative dispute resolution process in this section II.G.1.

**a. Notice.** A Party may initiate this dispute resolution by a written notice delivered to the other Party. The notice shall identify in detail the issues that are the subject of the dispute. In the event the dispute concerns a matter for which a proposed resolution cannot be reasonably made (e.g. where information or materials underlying the matter were not properly exchanged), the notice shall state the same.

**b. Response.** Fifteen (15) days after written notice is given under to section II.G.1.a., the Parties shall simultaneously exchange, in writing, a proposed resolution of the dispute, with reference to the reasons, information, and materials supporting the proposed resolution. Copies of all supporting materials shall accompany the counter-proposal. In the event the dispute concerns a matter for which a proposed resolution cannot be reasonably made (e.g. where information or materials underlying the matter were not properly exchanged), the exchange shall state the same.

**c. Good-faith effort to resolve.** Unless otherwise agreed in writing, within fifteen (15) days of the exchanges in section II.G.1.b., the Parties shall make good faith efforts to resolve the dispute.

**d. Binding Arbitration.** If the Parties are unable to resolve the dispute within fifteen (15) days of the exchanges in section II.G.1.b., then, absent written agreement otherwise, they shall submit the dispute to binding arbitration.

**(1) Arbitrators.** Within thirty (30) days of the exchanges in section II.G.1.b, each party shall select and submit to the other party in writing the name of one individual or entity to serve as the arbitrator. A selected arbitrator shall be completely neutral and, unless otherwise agreed by the Parties, shall not be, or have been: employed by the CITY or DISTRICT, other than as an arbitrator under this Agreement; have a family or business relationship with any person who is, or has been, employed by the CITY or DISTRICT; a customer of the CITY or DISTRICT; or, an owner or occupant of property located in the CSS or DSS. Proposed arbitrators shall be qualified to assess the subject matter of the dispute. If the Parties are unable to agree on an arbitrator, the two arbitrators shall, within seven (7) days, select a mutually-acceptable alternative arbitrator.

**(2) Arbitration.** Either party may initiate binding arbitration under this section II.G.1.d. by submitting a written request for dispute resolution to the arbitrator, with copy to the other party, containing the notice and exchanges, inclusive of all proposals, reasoning, and information and materials provided therewith, under section II.G.1.a-b. Within fifteen (15) days of the receipt of the written request for dispute resolution or such longer period as determined by

the arbitrator for good cause or as agreed by the Parties, the arbitrator shall conduct a hearing at which the parties and their representatives may appear and be heard. If the Parties fail to agree to a resolution of the dispute at the hearing or within any additional period of time allowed by the arbitrator for good cause or agreed by the Parties (“continued hearing”), within fifteen (15) days after the conclusion of the hearing, the arbitrator may issue and serve on each party a proposed decision that combines elements in each Party's proposal. If the Parties fail to agree to the suggested terms within ten (10) days of such written proposed decision, the arbitrator shall issue a final decision which may approve the proposal that the arbitrator determines to be the most reasonable or a combination of the proposals submitted by the Parties that the arbitrator determines represents a fair and reasonable resolution of the dispute. The arbitrator’s final decision shall be effective immediately and shall be binding and enforceable on the Parties. Notwithstanding that, either party may appeal or obtain relief from the courts otherwise on an arbitrator’s final decision if and only if it is contrary to the California Constitution or state law governing or limiting the exercise of local government powers by either the DISTRICT or the CITY. Each party shall pay one half the costs of arbitration under this section II.G.1.

**2. Arbitration of other disputes.** Any controversy or claim arising out of, seeking to enforce or interpret, or otherwise relating to this Agreement not subject to dispute resolution under Section II.G.1, shall be settled by binding arbitration administered by a single arbitrator or arbitration service approved by both Parties in accordance with the arbitration rules of the agreed upon arbitration service or contained in Code of Civil Procedure Sections 1280 et seq., if the Parties use a single arbitrator not provided through an arbitration service. If the Parties fail to agree on an arbitrator within thirty (30) days of a Party’s written notice for arbitration, either Party may apply to a court pursuant to Code Civ. Proc. §1281.6 to appoint an arbitrator. Judgment on the arbitration decision rendered may be entered in any court having jurisdiction thereof. Each party shall pay one-half of the fees and charges associated with arbitration under this section II.G.2. The arbitration shall be conducted in Ukiah, California, or as close thereto as reasonably practical. Any controversy or claim subject to arbitration must be made in the manner and within the time otherwise required by law, including, but not limited to the California Tort Claims Act (Gov. Code Sec. 810 et seq.), applicable statutes of limitation and other laws and judicial principles requiring the prompt adjudication of claims. Each party shall bear its own attorney’s fees, costs, and other expenses related to the arbitration proceeding.

## **H. MISCELLANEOUS**

**1. Entire Agreement Conditional.** This Agreement is expressly conditioned on execution and full performance by the Parties of the Settlement Agreement and Mutual Release concerning the Action, a copy of which is attached hereto and incorporated herein by reference as **Exhibit 1**.

**2. Effect on Participation Agreement, As Amended.** To the extent this Agreement may conflict in any manner with the Participation Agreement, this Agreement supersedes and replaces any such conflicting provisions and shall control.

**3. Indemnification.** Each party shall indemnify and defend the other party from and against any claim for damages by a third party against the indemnified party caused by or due to

actions or inactions of the first party, including but not limited to fines or other financial penalties imposed by a regulatory agency and for any expenses or liability of any kind. Such expenses shall include defense costs incurred by the indemnified party, where the indemnifying party fails to provide an adequate or timely defense to any such claim. The obligation to indemnify and defend shall arise, when the claim, expense or liability is based on or arises out of the failure of the indemnifying party to perform its obligations in accordance with Section II.C.3.a of this Agreement.

4. **Duration of Agreement.** This Agreement shall remain in effect while any portion of the DISTRICT's allocated share of debt service on bonds issued to fund the CWWTP Rehabilitation/Upgrade and Capacity Projects remains outstanding. Thereafter, the Agreement may be terminated by either Party with five (5) years advance written notice to the other Party, where the notice is accompanied by a certified copy of a resolution adopted by the Party's governing body authorizing notice and termination of the Agreement.

5. **No Third-Party Beneficiaries.** The Parties intend this Agreement is for the sole benefit of the Parties and do not intend to confer any rights hereunder to any third party, except to the extent third party beneficiaries are required in connection with the Refinancing.

6. **Time is of the Essence.** Time is of the essence regarding the Parties' performance and other obligations under this Agreement.

7. **Integration Clause.** This Agreement, the Settlement Agreement attached hereto and incorporated herein by reference as Exhibit 1, the provisions of the Participation Agreement and Financing Agreement not effectively amended or replaced by the provisions of this Agreement, constitute the entire agreement between the Parties concerning the subject matter hereof. They supersede and replace any other or prior agreements, representations, statements or understanding concerning the same. This Agreement may only be amended by written agreement executed by the Parties.

8. **Cooperation Clause.** The Parties, and each of them, shall promptly take all steps reasonably required to perform and carry out the terms of this Agreement.

9. **Construction.** This Agreement shall be interpreted under the laws of the State of California, except that no law, statutory or otherwise, that construes a term in this Agreement against a drafting party shall be applied or effective. This Agreement shall be construed, and shall be deemed, drafted by each party hereto.

10. **Notices.** Whenever written notice is required or permitted by this Agreement, it shall be deemed given when actually received, if delivered by personal delivery, fax or email, when receipt of the fax or the email is acknowledged, registered or certified mail or overnight courier, or 48 hours after deposit in the United States Mail with proper first-class postage affixed thereto, when addressed or sent as follows:

CITY OF UKIAH  
Attention: CITY Manager  
Ukiah Civic Center  
300 Seminary Avenue  
Ukiah, CA. 95482  
FAX:  
Email:

UKIAH VALLEY SANITATION  
DISTRICT  
Attn: General Manager  
151 Laws Ave., Ste. B  
Ukiah, CA 95482  
FAX:  
Email:

Either party may change the address, fax number or email address to which notices and other communications must be given by giving written notice as provided in this section.

11. **Counterparts.** Two or more copies of this agreement may be executed by the Parties. Each such copy, bearing the original signatures of the Parties, shall be considered an original, admissible in any administrative or judicial proceedings as evidence of the agreement between the Parties.

WHEREFORE, the Parties enter this Agreement effective on the date last executed below.

CITY OF UKIAH

UKIAH VALLEY SANITATION  
DISTRICT

\_\_\_\_\_  
By: Kevin Doble  
Mayor  
Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
By: Theresa McNerlin  
Chairperson  
Dated: \_\_\_\_\_, 2018

ATTEST:

\_\_\_\_\_  
Kristine Lawler, City Clerk  
Dated: \_\_\_\_\_, 2018

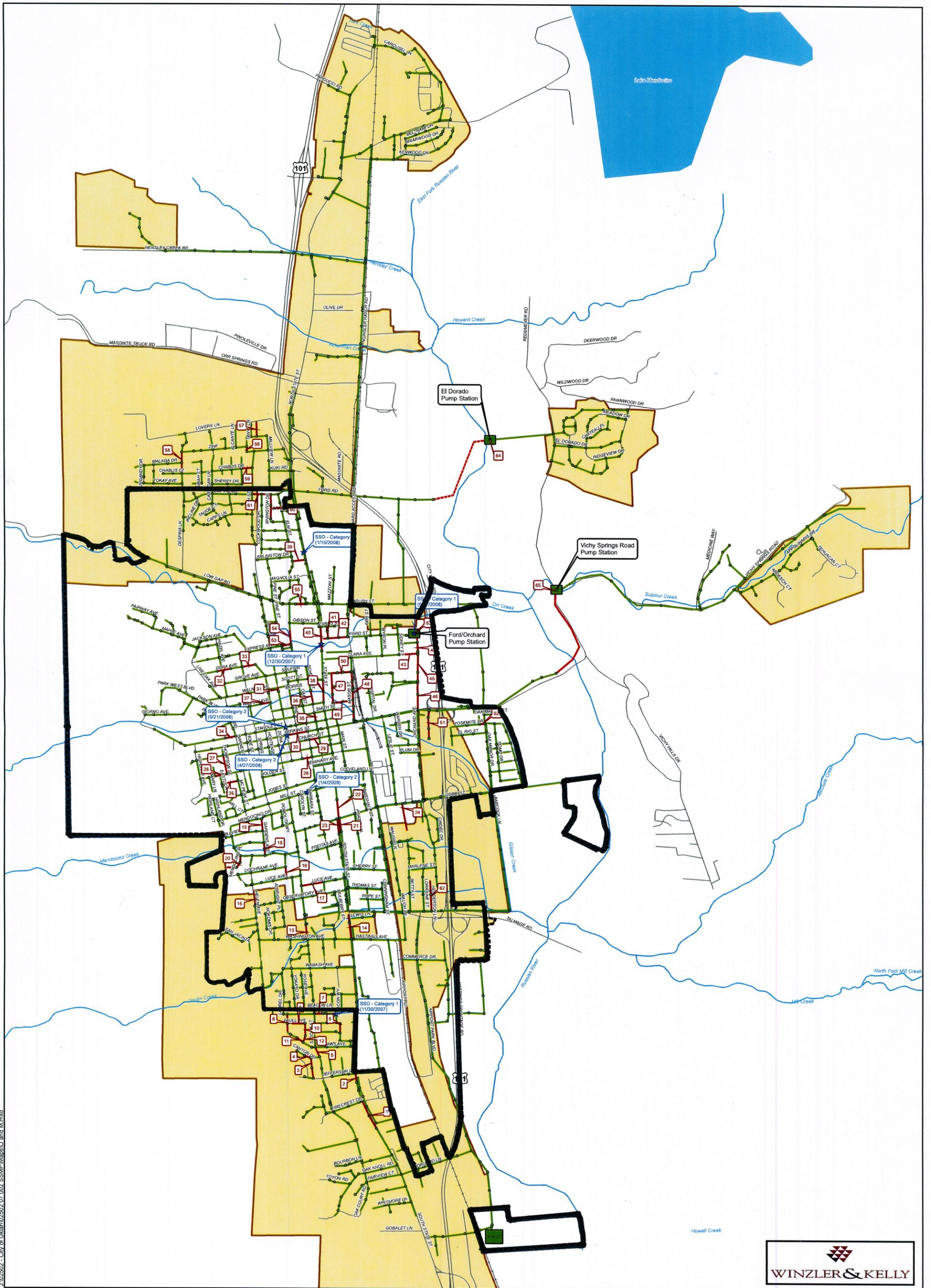
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Approved as to form:

\_\_\_\_\_  
David Rapport, Attorney  
CITY of Ukiah  
Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Duncan M. James, Attorney  
Ukiah Valley Sanitation DISTRICT  
Dated: \_\_\_\_\_, 2018

# EXHIBIT D-2

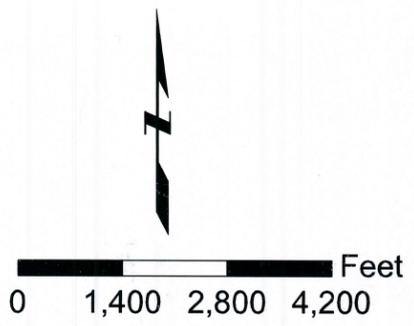


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**Legend**

- ★ Sanitary Sewer Overflow (SSO)
- Sanitary Sewer Manholes
- Sewer Maintenance
- Sanitary Sewer Gravity Pipe
- Sanitary Sewer Force Main
- Streets
- Rivers and Streams
- Sanitary Sewer Pump Stations
- Sanitary Sewer Treatment Plant
- Ukiah City Limits
- Ukiah Valley Sanitation District



**City of Ukiah/Ukiah Valley Sanitation District  
Operation and Maintenance  
Sanitary Sewer Basemap**

Sewer System Management Plan  
Mendocino County, California




02502-07-002  
April 2009

# EXHIBIT D-3

**CITY – DISTRICT 2020 REFINANCING AGREEMENT**

Dated as of February 24, 2020

By and Between

**CITY OF UKIAH**

And

**UKIAH VALLEY SANITATION DISTRICT**

Relating to the

**\$25,010,000**  
**CITY OF UKIAH**  
**SERIES 2020 WASTEWATER REVENUE REFUNDING OBLIGATIONS**  
**(2020 WASTEWATER REFUNDING PROJECT)**

and the

**\$25,005,000**  
**UKIAH VALLEY SANITATION DISTRICT**  
**WASTEWATER REVENUE REFUNDING BONDS, SERIES 2020**

## **CITY – DISTRICT 2020 REFINANCING AGREEMENT**

This CITY – DISTRICT 2020 REFINANCING AGREEMENT (“Agreement”), dated for convenience as of February 24, 2020, is by and between the CITY OF UKIAH, a municipal corporation and general law city, duly organized and validly existing under the laws of the State of California (the “City”), and the UKIAH VALLEY SANITATION DISTRICT, a county sanitation district organized and existing under and by virtue of the laws of the State of California (the “District”);

### **WITNESSETH:**

**WHEREAS**, the City owns a wastewater treatment plant (the “City WWTP”) and a system for the collection and disposal of wastewater within the City, including sewer mains, laterals and related facilities (collectively with the City WWTP, the “City Wastewater System”). The City provides wastewater collection, treatment, and effluent disposal services to customers within the City; and

**WHEREAS**, the District owns a system for the collection and transmission of wastewater within the District, including sewer mains, laterals, the Trunk Line and related facilities (collectively, the “District Wastewater System”), which wastewater is treated at the WWTP; and

**WHEREAS**, in order to finance certain capital improvements to, and to upgrade and rehabilitate, the WWTP, the City previously entered into an Installment Sale Agreement, dated as of March 1, 2006 (the “2006 Installment Sale Agreement”) with the Association of Bay Area Governments (the “Authority”), pursuant to which the City agreed to make certain installment payments (the “2006 Installment Payments”), and in connection therewith the Authority issued its \$75,060,000 original aggregate principal amount of 2006 Water and Wastewater Revenue Bonds, Series A (the “2006 Bonds”), pursuant to a Trust Agreement dated as of March 1, 2006 (the “2006 Trust Agreement,” and together with the 2006 Installment Sale Agreement, the “Prior Obligation Documents”), between the Authority and Wells Fargo Bank, National Association, as trustee (the “Prior Trustee”); and

**WHEREAS**, the City and the District entered into a Financing Agreement dated March 2, 2006 (the “2006 Financing Agreement”), whereby the District agreed to apportionment to it of an allocable share of the 2006 Installment Payments (the “District’s Allocable Share”); and

**WHEREAS**, the District has determined that it is in the best interests of the District and its customers that the District issue its Ukiah Valley Sanitation District Wastewater Revenue Refunding Bonds, Series 2020 (the “District’s 2020 Obligations”) secured by and pursuant to an Indenture dated as of February 1, 2020 by and between U.S. Bank National Association, as trustee (the “Trustee”) and the District (the “Indenture”), the proceeds of which, combined with a \$2.5 million cash contribution from the District’s unrestricted fund balance, will be used to fully prepay the District’s Allocable Share; and

**WHEREAS**, the City has determined that it is in the interests of the City at this time to provide for the execution and delivery of its “City of Ukiah, Series 2020 Wastewater Revenue

Refunding Obligations (2020 Wastewater Refunding Project)” (the “City’s 2020 Obligations”) pursuant to a 2020 Financing Agreement by and between BBVA Mortgage Corporation (the “Corporation”) and the City (the “Financing Agreement”), as evidenced by a Promissory Note, dated February 24, 2020 (the “Note,”), the proceeds of which will be combined with the proceeds of the District’s 2020 Obligations and cash contribution and used to prepay and defease all outstanding 2006 Bonds in accordance with certain Irrevocable Deposit and Refunding Instructions given by the City to the Prior Trustee, dated as of February 24, 2020 (the “Refunding Instructions”) in the form attached hereto and incorporated herein by reference as Exhibit A; and

**WHEREAS**, the City and the District have previously entered into an Operating Agreement dated October 3, 2018, as may be amended from time to time (the “Operating Agreement”), which sets forth, among other things, the responsibilities and the terms under which the City and the District provide wastewater collection and treatment services to their respective ratepayers and residents; and

**WHEREAS**, the 2006 Bonds were issued to finance (i) a project designed to expand the capacity of the City WWTP (the “Capacity Project”) by 2,400 ESSU’s (as defined in the Operating Agreement), and (ii) a project designed to upgrade and rehabilitate the City WWTP (the “Rehab Project”); and

**WHEREAS**, as set forth in Section II.D.2 of the Operating Agreement, 25.8414% of the debt service on the 2006 Bonds is apportioned to the Capacity Project (the “25.84% Capacity Component”) and 74.1586% of the debt service on the 2006 Bonds is apportioned to the Rehab Project (the “74.16% Rehabilitation Component”); and

**WHEREAS**, as set forth in Section II.D.2 of the Operating Agreement, the District’s and City’s respective obligations to pay the 25.84% Capacity Component is shared as follows: 65% to the District (the “District’s Share of Capacity Component”) and 35% to the City (the “City’s Share of Capacity Component”), subject to adjustment as provided in the Operating Agreement; and

**WHEREAS**, as set forth in Section II.D.2 of the Operating Agreement, the District’s and City’s respective obligation to pay the 74.16% Rehabilitation Component is allocated between the City and District based on the “Allocation Methodology,” which is particularly described in the Operating Agreement; and

**WHEREAS**, as part of this Agreement, the City and the District have agreed to an Allocation Methodology to be used commencing March 2, 2020, subject to annual adjustment each fiscal year thereafter commencing July 1, 2020; and

**WHEREAS**, based on the proposed implementation of the Allocation Methodology by Hildebrand Consulting (“Hildebrand Implementation”) jointly hired by the City and the District on January 16, 2019, to conduct a Joint Rate Study for the City and the District, the City and District agree that the District will refinance 54% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 as part of the District’s 2020 Obligations, and the City will refinance 46% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 as part of the City’s 2020 Obligations; and

**WHEREAS**, there has been a dispute between the City and the District concerning the characterization of a Connection as one that is a District or City connection, including the Mendocino County Jail (the “Jail”), and, in order to avoid potential litigation, the City and District agree to resolve the dispute as provided in Section 7; and

**WHEREAS**, the City and the District have each authorized the execution, delivery and performance of this Agreement; and

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH**, in consideration of the premises and of the mutual covenants herein contained and the Recitals above, which are incorporated into the terms hereof by reference, and for other valuable considerations, the receipt whereof is hereby acknowledged, the City and District do hereby covenant and agree, as follows:

**Section 1. Definitions.** Unless otherwise specified or defined herein, capitalized terms used in this Agreement shall have the same meaning given to those terms in the Operating Agreement.

**Section 2. Agreed Upon Allocable Shares.** The City and the District hereby agree that the District will refinance 54% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 as part of the District’s 2020 Obligations, and the City will refinance 46% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 as part of the City’s 2020 Obligations (the District’s 2020 Obligations and the City’s 2020 Obligations are collectively referred to herein as the “Total 2020 Obligations”).

**Section 3. Agreement to Transfer Proceeds to 2006 Trustee.** The City and the District hereby agree that (i) the 46% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 the City will refinance as part of the City’s 2020 Obligations equates to \$22,845,000, which the City agrees to transfer to the 2006 Trustee in accordance with the Refunding Instructions, and (ii) the 54% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 the District will refinance as part of the District’s 2020 Obligations equates to \$26,825,000, which the District agrees to transfer to the 2006 Trustee on or prior to February 24, 2020 for irrevocable deposit into the Redemption Fund in accordance with the Refunding Instructions.

**a. Payment of March 1, 2020, Installment.** The City shall transfer to the 2006 Trustee, from District revenues on hand with the City, 52% of the March 1, 2020 installment payment due on the 2006 Bonds net of the District’s 52% allocable share of the balance in the 2006 Revenue Fund. The remaining 48% of the March 1, 2020 installment payment, net of the City’s 48% allocable share of the balance in the 2006 Revenue Fund, will be paid with a portion of the proceeds of the City’s 2020 Obligations.

**Section 4. No Transfer of District Accounts to District WWTP.** The District hereby agrees that it shall not transfer customers from the City’s WWTP to a District WWTP or the fees paid by those customers for sewer service and used to pay the District’s share of expenses for the City’s WWTP under the Operating Agreement, until such time as both the City and the District

have fully repaid and defeased their respective Total 2020 Obligations, but not later than March 1, 2035.

**Section 5. Allocation of Revenue, Expenses and Debt Service Upon Detachment.**

Except as otherwise provided in the City's Financing Agreement and the District's Indenture regarding the Overlap Area, in the event any change of organization by either party results in detachment of sewer services from all or any portion of one party ("Transferring Party") to the other party ("Receiving Party") (the "Detached Area"), including in connection with any future annexations, effective when the detachment becomes effective: (1) Customers and Connections in the Detached Area, including the revenue from them, shall be transferred to the Receiving Party and become the Receiving Party's customer accounts (the "Transferred Accounts"); (2) the allocation of Combined CITY/DISTRICT Sewer System costs shared by the City and the District attributable to the Transferred Accounts shall be paid by the Receiving Party in accordance with the Operating Agreement; and (3) the portion of the Transferring Party's (District's or City's) 2020 Obligations attributable to the Transferred Accounts shall, in accordance with the Operating Agreement, be either (i) transferred from the Transferring Party to and assumed by the Receiving Party in accordance with the Transferring Party's Indenture or Financing Agreement with the Trustee or Corporation that underlie that party's 2020 Obligations, (ii) legally defeased in accordance with the Transferring Party's Indenture or Financing Agreement with the Corporation or Trustee that underlie that party's 2020 Obligations with a sufficient deposit by the Receiving Party which shall be accepted by the Transferring Party into an irrevocable escrow fund held by the escrow agent for the Transferring Party's 2020 Obligations; or (iii) realigned in a manner allowable by the Corporation and LAFCO. Nothing herein shall alter the parties' rights and obligations concerning reorganizations as provided in the Operating Agreement.

**Section 6. True Up Process.** The District is obligated to make its payments under the District's 2020 Obligations and the City is obligated to make its payments under the City's 2020 Obligations. Prepaying and defeasing the 2006 Bonds with two separate refinancings does not allow for debt service to be annually adjusted between the District and the City. Notwithstanding, the District and the City agree to a true up process whereby true up payments are computed and paid annually according to the Operating Agreement.

Commencing in Fiscal Year 2020-21, a third party selected by both the City and the District will annually calculate the applicable fiscal year's debt service allocation according to the Operating Agreement. If the resulting allocation varies from a 54% District and 46% City debt service allocation, the party with the increased allocation will make a true up payment to the party with the decreased allocation at the end of the fiscal year. By no later than March 31, 2020, the Parties shall retain a third-party consultant to assist the Parties in developing and administering the protocols for implementing the requirements of this Section 6 annually and in the event of detachment.

**Section 7. Development of Rules for Designating Accounts as City or District Accounts.**

(a) Developing Rules. No later than April 30, 2020, the District Board of Directors and the City Council shall meet in joint session to discuss the definitions of such terms as "point of connection," "sewer main," "sewer lateral," and "sewer service connection" and to identify other

criteria for determining when a customer receiving sewer service within the City and the District is a District or City customer. The governing bodies may determine any further procedures and timelines for completing this process, including the formation of ad hoc committees or directing the submission of reports by City or District staff or consultants to one or more further joint sessions of the District Board and City Council.

(b) Dispute Resolution.

(1) Matters subject to dispute resolution. If within 120 days from their first joint meeting the City Council and the District Board have not agreed on the rules for determining whether an account/customer is a District or City account/customer, either party may initiate binding dispute resolution as set forth below. If rules are adopted by the City Council and the District Board but the City and the District do not agree on how the rules apply to a particular account/customer, within 30 days after either party gives written notice that it claims the account/customer based on the adopted rules, the dispute shall be resolved exclusively by binding dispute resolution as provided below. If any agreements reached by the District Board and City Council or a decision of the Hearing Officer under subsection (b)(2) below warrant treating any account/customer as an account/customer of the other party, that account/customer shall be transferred accordingly and any connection fees, revenues and expenses associated with that account/customer shall be treated thereafter as revenue and expenses of the party to whom the account(s)/customer(s) are transferred as otherwise provided in the Operating Agreement. Additionally, any connection fee, whether resulting from a new connection or one from a change in use, etc., associated with an existing connection, accruing on or paid by said account(s)/customer(s) during the time from the date of this Agreement through the date of any agreement by the governing bodies or decision of the Hearing Officer, shall be transferred to the party to whom the account(s)/customer(s) is transferred, unless the District Board and City Council agree otherwise. Accordingly, the District withdraws its claim for damages filed with the City on October 16, 2019, but said withdrawal shall not be deemed a waiver of any further claim that the Mendocino County Sheriff's Office rehabilitation and jail facility(ies) located on Low Gap Road in Ukiah, California ("Jail Accounts"), is a District account/customer, if brought in accordance with the provisions in this section, including the provision transferring revenue and expenses associated with that account only for the period of time after the account has been transferred. In consideration of that waiver, in the event a further claim is brought by the District pursuant to this section: the District shall not be required to, and City waives any requirement that the District, file a government or other formal claim concerning the Jail Accounts, as the matter shall proceed as provided herein; and, the City waives any defense in that proceeding that the District's claim is subject to any timing based defense, including the statute of limitations.

(2) Dispute resolution procedure. Unresolved disputes under subsection (b)(1) above shall be resolved using the following procedures which are similar to those used in law and motion matters without the opportunity for discovery, including depositions. Notwithstanding that, the parties shall promptly comply with informal information requests made by the other party. This process shall be deemed to have commenced on the date that the governing body of either party

gives written notice to the other party that it requests dispute resolution. A mutually agreed upon attorney or sitting or retired judge in Mendocino or Sonoma Counties (“Hearing Officer”) shall hear and decide the dispute. If the parties have failed to agree on the selection of the Hearing Officer within 15 days of initiating these procedures, they shall each designate one candidate. The designees shall then select, among themselves, the Hearing Officer who shall hear and decide the matter. The Hearing Officer shall base his/her decision on submissions from the parties, including declarations under penalty of perjury, documents and/or stipulated facts and written and oral arguments, unless the Hearing Officer on his or her own initiative requests additional information. All written submissions by the City and the District shall be submitted to the Hearing Officer and each other simultaneously within 30 days of selecting the Hearing Officer. The Hearing Officer shall conduct one hearing within 30 days after the written submissions by the parties have been served on each other to hear oral argument and shall make a written decision within 30 days after the hearing concludes. The parties shall be bound by the Hearing Officer’s written decision which shall not be subject to further appeal.

**Section 8. Settlement Payment Subordinate to Debt Service.** The City and District entered into a Settlement Agreement and Release (the “Settlement Agreement”) whereby the City agreed to pay the District \$4,000,000 in equal annual payments of \$1,000,000 each, commencing November 1, 2019 (the “Settlement Payments”). The City and the District hereby agree that the Settlement Payments are subordinate to the debt service payments made on the City’s 2020 Obligations.

**Section 9. City Agrees to Receive District’s Allocable Share.** Upon the District’s signature hereto, and so long as the District can prepay the District’s 54% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 in accordance with Section 3 hereof by not later than February 24, 2020, the City hereby agrees to accept the District’s payment in full satisfaction of the District’s obligations under the 2006 Financing Agreement, whereupon said agreement shall automatically terminate.

**Section 10. Tax Certification.**

**a. Current Refunding.** The City hereby acknowledges receipt of \$26,825,000 (the “District Contribution”) from the District on February 24, 2020, for the specific purpose of causing the redemption of the 54% of the principal amount of the 2006 Bonds outstanding after March 1, 2020 as referenced herein (the “District’s Portion of Refunded 2006 Bonds”). The District Contribution, including earnings thereon, will be used to redeem the District’s Portion of Refunded 2006 Bonds within 90 days of the date hereof, in accordance with the Refunding Instructions.

**b. Ownership and Use of Project; Continuing Compliance.** The City has made certain covenants relating to the Project and the 2006 Bonds, as set forth in the Certificate Regarding Use of Proceeds, dated as of March 2, 2006 (the “2006 Use Certificate”), which is attached hereto as Exhibit B. The City acknowledges that the 2006 Use Certificate has not been amended since its original execution, and that the City has, since the issuance of the 2006 Bonds, been in compliance with the covenants set forth therein. The City further acknowledges that the City shall not take any action or permit to be taken any action within its control which would cause or which, with the

passage of time if not cured could cause, interest on the District's 2020 Obligations to become includable in gross income for federal income tax purposes.

**Section 11. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the City and the District and their respective successors and assigns.

**Section 12. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 13. Further Assurances and Corrective Instruments.** The City and the District agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

**Section 14. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 15. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 16. Operating Agreement Controls.** Any provisions of the Operating Agreement not expressly changed by this Agreement are unchanged by this Agreement and remain in full force and effect.

*[Signature Page to Follow on Next Page]*

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name by its duly authorized officer; and the District has caused this Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

UKIAH VALLEY SANITATION DISTRICT

By:   
David Redding, General Manager

ATTEST:  
  
Chelsea Teague, District Clerk

Approved as to form:

  
Donald McMullen, District Attorney

CITY OF UKIAH, CALIFORNIA

By:   
Douglas Crane, Mayor

ATTEST:  
  
Kristine Lawler, City Clerk

Approved as to form:

  
David J. Rapport, City Attorney

**Exhibit A**  
**Form of Refunding Instructions**

**\$25,010,000**  
**CITY OF UKIAH**  
**SERIES 2020 WASTEWATER REVENUE REFUNDING OBLIGATIONS**  
**(2020 WASTEWATER REFUNDING PROJECT)**

and the

**\$25,005,000**  
**UKIAH VALLEY SANITATION DISTRICT**  
**WASTEWATER REVENUE REFUNDING BONDS, SERIES 2020**

**IRREVOCABLE DEPOSIT AND REFUNDING INSTRUCTIONS**

These IRREVOCABLE DEPOSIT AND REFUNDING INSTRUCTIONS (these “Instructions”) are dated as of February 24, 2020, and are given by the CITY OF UKIAH, a public body and political subdivision, organized and existing under and by virtue of the laws of the State of California (the “City”), to WELLS FARGO BANK, NATIONAL ASSOCIATION, acting as trustee for the 2006 Bonds described below (the “2006 Trustee”);

*BACKGROUND:*

1. In order to provide funds for the acquisition and construction of certain public improvements within the City, the City previously worked with the Association of Bay Area Governments (the “Authority”) to provide for the issuance of \$75,060,000 original principal amount of Association of Bay Area Governments, 2006 Water and Wastewater Revenue Bonds, Series A (the “2006 Bonds”), pursuant to an Indenture of Trust dated as of March 1, 2006, by and between the City, the 2006 Trustee and the Authority (the “2006 Indenture”).

2. The 2006 Bonds are secured primarily by “Installment Payments” made pursuant to an Installment Sale Agreement dated as of March 1, 2006, by and between the City, the Authority and the Trustee (the “2006 ISA,” and together with the 2006 Indenture, the “2006 Bond Documents”).

3. Pursuant to the 2006 Indenture, the Authority assigned its rights to the Installment Payments to the 2006 Trustee, which the 2006 Trustee uses to pay commensurate debt service on the 2006 Bonds.

4. In order to provide revenue support to the City for the Installment Payments, the City and the Ukiah Valley Sanitation District (the “District”) entered into a Financing Agreement dated March 2, 2006 (the “2006 Financing Agreement”), whereby the District agreed to assume responsibility for an allocable share of the Installment Payments (the “District’s Allocable Share”).

5. The District has determined that it is in the public interests of the District to issue its Ukiah Valley Sanitation District Wastewater Revenue Refunding Bonds, Series 2020 (the “District’s 2020 Obligations”) secured by and pursuant to an Indenture dated as of February 1, 2020 by and between U.S. Bank National Association, as trustee thereunder (the “2020 Trustee”), and the District (the “Indenture”), the proceeds of which, combined with a \$2.5 million cash contribution from the District’s unrestricted fund balance, will be used to fully prepay the District’s Allocable Share.

6. The City has determined that it is in the public interests of the City to provide for the prepayment of all outstanding principal components of the Installment Payments (and accrued interest thereon) thereby causing the refunding of the outstanding principal balance of the 2006 Bonds (the "Refunding"), and to that end, in order to obtain funds necessary to implement such Refunding, the City has provided for the execution and delivery of its "City of Ukiah, Series 2020 Wastewater Revenue Refunding Obligations (2020 Wastewater Refunding Project)," in the aggregate principal amount of \$25,010,000 (the "2020 Obligations"), all pursuant to and secured by a 2020 Financing Agreement (the "Financing Agreement"), dated as of February 1, 2020, by and between the City and BBVA Mortgage Corporation (the "Corporation").

7. The 2006 Bonds are subject to optional prepayment in full on March 1, 2020 (the "Redemption Date") upon the prepayment of all outstanding principal components of the Installment Payments and accrued interest thereon.

8. The City wishes to give these Instructions to the 2006 Trustee for the purpose of providing for the prepayment in full of the principal components of the Installment Payments together with the interest component of the Installment Payment required to be paid on or accrued to the Redemption Date.

9. Pursuant to the 2006 Indenture, the 2006 Trustee shall receive all amounts transferred and/or deposited by the City and/or the District in connection with these Instructions and shall immediately deposit all such funds into the redemption fund established pursuant to Section 4.03 of the 2006 Indenture (the "2006 Redemption Fund"), which shall represent an irrevocable security deposit for the prepayment and redemption of all remaining outstanding 2006 Bonds in accordance with the 2006 Bond Documents.

10. As a result of the irrevocable deposit of funds in accordance with these Instructions, the City's obligations under the 2006 ISA and the pledge of Net Revenues (as defined in the 2006 ISA) and all other security provided by the 2006 ISA, will cease and terminate in accordance with the provisions of Article IX of the 2006 ISA, and the 2006 Bonds will correspondingly be discharged pursuant to Section 9.03 of the 2006 Indenture.

### *INSTRUCTIONS:*

In order to provide for the prepayment in full of the principal components of the Installment Payments in accordance with Article VII of the 2006 ISA, and the corresponding optional prepayment and discharge of the 2006 Bonds in accordance with Sections 2.03(a) and 9.03 of the 2006 Indenture, the City hereby irrevocably directs the 2006 Trustee as follows:

#### **Section 1. Irrevocable Deposit into the 2006 Redemption Fund.**

The 2006 Trustee is hereby directed to receive all amounts transferred and/or deposited to or with the 2006 Trustee by the City and/or the District in connection with these Instructions and to immediately deposit all such funds into the 2006 Redemption Fund to be held by the 2006 Trustee as an irrevocable security deposit for the corresponding optional prepayment and discharge of the 2006 Bonds in accordance with Sections 2.03(a) and 9.03 of the 2006 Indenture. All cash and securities in the 2006 Redemption Fund are hereby irrevocably pledged for the payment of the principal and interest represented by the 2006 Bonds in accordance with the 2006 Bond Documents. If at any time the 2006 Trustee receives actual knowledge that the cash and securities in the 2006 Redemption Fund will not be sufficient to make any payment required by

Section 2 in respect of the 2006 Bonds, the 2006 Trustee shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The 2006 Trustee has no liability for any such insufficiency.

On or before February 24, 2020 (the "Closing Date"), the following actions shall occur:

- a. The City shall cause the Corporation to transfer to the 2006 Trustee the amount of \$24,404,503.74 for deposit in the 2006 Redemption Fund.
- b. The 2020 Trustee shall transfer to the 2006 Trustee the amount of \$26,702,481.43 for deposit in the 2006 Redemption Fund.
- c. The City shall transfer to the 2006 Trustee the amount of \$1,802,527.36 from moneys on hand with the City for deposit in the 2006 Redemption Fund.
- d. The 2006 Trustee shall transfer the amount of \$900.92 from the 2006 Revenue Fund and the amount of \$0.31 from the installment payment balance for deposit in the 2006 Redemption Fund, together with the amount of \$104,367.67 presently on deposit in the 2006 Redemption Fund (credited to the City) and the amount of \$122,518.57 presently on deposit in the 2006 Redemption Fund (credited to the District).

**Section 2. Application of the 2006 Redemption Fund.**

The 2006 Trustee is hereby irrevocably instructed, to which instructions the 2006 Trustee agrees, to apply the amounts on deposit in the 2006 Redemption Fund to pay and redeem the 2006 Bonds through and including the Redemption Date, in accordance with the following schedule:

<u>Redemption Date</u>	<u>Maturing Principal</u>	<u>Redeemed Principal</u>	<u>Interest</u>	<u>Redemption Premium</u>	<u>Total Payment</u>
03/01/2020	\$2,280,000.00	\$49,670,000.00	\$1,187,300.00	\$0.00	\$53,137,300.00

Following the prepayment and redemption of the 2006 Bonds in full on the Redemption Date, the 2006 Trustee shall transfer any amounts remaining on deposit in the 2006 Redemption Fund to the City.

**Section 3. Required Notices.** The 2006 Trustee acknowledges that the prepayment of all outstanding principal components of the Installment Payments (and accrued interest thereon) will cause a corresponding prepayment and redemption of all outstanding 2006 (the "Called Bonds"). The 2006 Trustee further acknowledges that it has provided the owners of the Called Bonds with notice of redemption, in the manner provided by, and meeting the requirements of the 2006 Bond Documents, a form sample of which is attached hereto as Exhibit A.

**Section 4. Application of Certain Terms of 2006 Bond Documents.** All of the terms of the 2006 Bond Documents relating to the payment and prepayment of principal and interest represented by the 2006 Bonds, as well as the protections, immunities and limitations from liability afforded the 2006 Trustee, are incorporated in these Instructions as if set forth in full herein. These Instructions set forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the 2006 Trustee shall be inferred from the terms of these Instructions or any other agreement.

**Section 5. Compensation to Trustee.** The City shall pay the 2006 Trustee full compensation for its services under these Instructions, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof.

**Section 6. No Right of Set Off.** Under no circumstances shall amounts deposited in or credited to the 2006 Redemption Fund be deemed to be available for any purpose other than as set forth herein. The 2006 Trustee has no lien upon or right of set off against the cash and securities at any time on deposit in the 2006 Redemption Fund.

**Section 7. Applicable Law.** These Instructions shall be governed by and construed in accordance with the laws of the State of California.

**Section 8. Execution in Counterparts.** These Instructions may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same document.

*[Signature Page to Follow on Next Page]*

IN WITNESS WHEREOF, the City and the 2006 Trustee have each caused these Instructions to be executed by their duly authorized officers all as of the date first above written.

**CITY OF UKIAH, CALIFORNIA**

By: \_\_\_\_\_  
Daniel Buffalo, Finance Director

Attest:

By: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**WELLS FARGO BANK,  
NATIONAL ASSOCIATION,**  
as 2006 Trustee

By: \_\_\_\_\_

EXHIBIT A

FORM OF CONDITIONAL NOTICE OF FULL OPTIONAL REDEMPTION  
to the Holders of

ASSOCIATION OF BAY AREA GOVERNMENTS  
2006 WATER AND WASTEWATER REVENUE BONDS  
SERIES A

CONDITIONAL NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds (the "2006 Bonds") pursuant to the Indenture of Trust, dated as of March 1, 2006 (the "Indenture"), by and between the Association of Bay Area Governments (the "Authority") and Wells Fargo Bank, National Association, as trustee (the "2006 Trustee"), that all outstanding 2006 Bonds in the aggregate principal amount of \$\_\_\_\_\_ have been called for redemption on March 1, 2020 (the "Redemption Date"). Redemption of the 2006 Bonds on the Redemption Date as described in this notice shall be conditioned upon the receipt by the 2006 Trustee of the funds sufficient for the proposed redemption on or before the Redemption Date. The 2006 Bonds to be called, which were originally issued on March 2, 2006, are as follows:

<i>Original</i>	<i>Maturity</i>	<i>Principal</i>	<i>Redemption</i>
<u>CUSIP*</u>	<u>(March 1)</u>	<u>Amount</u>	<u>Price</u>

The 2006 Bonds will be payable on the Redemption Date at a Redemption Price of 100% of the principal amount plus accrued interest with respect thereto to such date (the "Redemption Price"). The Redemption Price of the 2006 Bonds will become due and payable on the Redemption Date. From and after the Redemption Date, interest on the 2006 Bonds to be redeemed will cease to accrue, and such 2006 Bonds will be surrendered to the Trustee.

This Conditional Notice will be withdrawn if the 2006 Trustee does not receive funds sufficient to pay the Redemption Price on or before the Redemption Date. If this Conditional Notice is withdrawn, this Conditional Notice shall be null and void and of no force or effect, and any 2006 Bonds delivered for redemption shall be returned to the respective owners thereof, and the 2006 Bonds shall remain outstanding as though this Conditional Notice of Redemption had not been given. Notice of a failure to receive funds, and cancellation of this redemption, will be given by Wells Fargo Bank, National Association, as 2006 Trustee, to the registered owners of the 2006 Bonds.

To receive payment on the Redemption Date, owners of the 2006 Bonds should present and surrender said 2006 Bonds on the Redemption Date at the address of the Trustee set forth below:

Registered/Certified Mail:

**Wells Fargo Bank, N.A.**  
Corporate Trust Operations  
P.O. Box 1517  
Minneapolis, MN 55480-1517

Air Courier:

**Wells Fargo Bank, N.A.**  
600 Fourth Street, 7<sup>th</sup> Floor  
Minneapolis, MN 55479  
MAC N9300-070

If the Owner of any 2006 Bond fails to deliver such 2006 Bond to the Trustee on the Redemption Date, such 2006 Bond shall nevertheless be deemed redeemed on the Redemption Date and the Owner of such 2006 Bond shall have no rights in respect thereof except to receive payment of the Redemption Price from funds held by the Trustee for such payment.

*A signed W-9 is required to accompany the 2006 Bonds or 28% of the 2006 Bond redemption proceeds will be withheld.*

By: **WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as 2006 Trustee

Dated this \_\_\_ day of \_\_\_\_\_, 2020.

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*\* Note: The Authority and Trustee shall not be responsible for the selection or use of the CUSIP numbers selected, nor is any representation made as to their correctness indicated in the notice or as printed on any 2006 Bonds. They are included solely for the convenience of the holders.*

**Exhibit B**

**2006 Use Certificate**

**\$75,060,000**  
**ASSOCIATION OF BAY AREA GOVERNMENTS**  
**2006 WATER AND WASTEWATER REVENUE BONDS**  
**SERIES A**

**CERTIFICATE REGARDING USE OF PROCEEDS**

The undersigned hereby states and certifies as follows:

(i) that I am the Finance Director of the City of Ukiah (the "City"), and, as such, I am authorized to execute this certificate on behalf of the City and am knowledgeable with respect to the matters set forth herein;

(ii) that the City has entered into an Installment Sale Agreement dated as of March 1, 2006 (the "Installment Sale Agreement"), between the Association of Bay Area Governments, the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"), for the purpose of providing funds for improvements to the Project defined below;

(iii) that on the date hereof, the Trustee has transferred a portion of the proceeds of the above-captioned Bonds to the City for deposit into the Project Fund which is established under Section 3.6 of the Installment Sale Agreement (the "Project Fund");

(iv) that the proceeds of the Bonds deposited in the Project Fund will be used to finance projects of the City relating to the Water System (the "Project"), as more particularly described in Part I of Exhibit A hereto attached and by this reference herein incorporated;

(v) that Part II of Exhibit A hereto attached describes (A) each use to be made by any person of the Project, other than use by the City and other non-federal governmental units and other than use by members of the public generally, and (B) payments (if any) directly or indirectly in respect of such use which are to be made after the date hereof;

(vi) that no portion of the proceeds of the Bonds will be, used, directly or indirectly, to make or finance a loan to any person (other than a State or local government unit) or to acquire property which will be sold to any person (other than a State or local government unit) on an installment sale basis except as referenced in Part II of Exhibit A; and

(vii) that the City expects to use the Project for the purposes referenced in Exhibit A or for other governmental purposes of the City during the entire term of the Bonds.

Dated: March 2, 2006

CITY OF UKIAH

By   
Mike McCann,  
Finance Director

## EXHIBIT A

### I. Description of Project

*The Project consists of the construction of the new treatment plant and the rehabilitation, upgrade and expansion of the existing treatment plant. The Project has been designed to produce a wastewater treatment plant that can reliably meet effluent requirements for the design year 2025 and produce Class A biosolids. A new influent pump station will be built to address deficiencies of the existing one. Two climber-type bar screens and a bypass channel will be used to remove coarse solids. Four aerated grit tanks will be added and the existing secondary clarifiers will be converted to primary clarifiers. A new trickling filter will provide plant redundancy and a pre-aeration tank will be converted to an equipment gallery to house the snail separation and dewatering facilities. The existing primary clarifiers will be converted to solids contact tanks to meet current and future discharge requirements. Following completion of the Project, the plant will have a capacity of 3.01 MGD ADWF.*

### II. Description of Use of Project

- A. Expected use by any Person Other than Governmental Units or Members of Public Generally

*None*

- B. Expected payments to be Made after Date Hereof in Respect of Above Use

*None*

# EXHIBIT D-4



# Joint Sewer Rate Study Draft Findings and Recommendations

March 11, 2020



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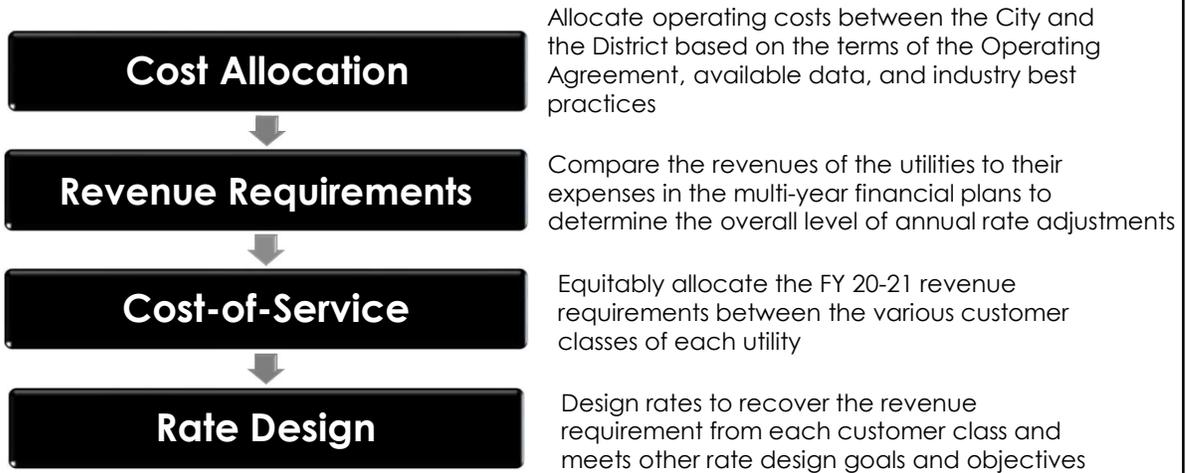
## AGENDA

1. Study Overview & Scope
2. Operating Agreement Requirements
3. Proposed Operating Cost Allocation
4. Financial Plan Results
5. Cost of Service & Rate Design
6. Next Steps

2

2

## Study Overview



3

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# Cost Allocation

4

## Operating Agreement (“OA”) Highlights

- ✓ Treatment & collection costs are apportioned between the City and the District primarily based on each party's proportionate water consumption and relative strength of sewage.\*
- ✓ The OA characterized 3 functions: (1) billing/collection, disbursement, and accounting of funds (2) O&M of collection system; and (3) O&M of the CWWTP.

\* Sewer flow and strength is measured in this Study with “Equivalent Sewer Service Strength Units” (ESSSUs), which are similar but not identical to the ESSUs cited in the Operating Agreement

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## Operating Agreement Cost Allocation Principles

- With the exception of utility billing costs, the allocation of O&M costs is based in proportionate share of Equivalent Sanitary Sewer Units (ESSSUs) determined based on winter water consumption (Jan – March) and relative strength of sewage for each customer class.
  - ✓ The ratio of the sum is used to establish each party's proportionate use of the CWWTP for purpose of allocating combined budgeted costs
- Capital costs are generally allocated in the same manner as O&M for projects that benefit both parties
  - ✓ That being said, each project is negotiated individually
- Cost allocations:
  - ✓ Operating Costs: 53% City : 47% District : default allocation (re-calculated by study, **see Slide 8**)
  - ✓ Existing Debt:
    - ✓ Initial default allocation per Operating Agreement: 52% City : 48% District
    - ✓ Going forward, allocation calculated based on
      - ✓ **Capacity portion** (25.8% of debt) 35% City : 65% District
      - ✓ **Upgrade/Rehabilitation portion** (74.2% of debt) based on “ESSSU split” (recalculated every year)
  - ✓ New Debt: ESSSU split or otherwise negotiated

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## Cost Allocation Highlights

- ✓ Water usage data taken from City of Ukiah, Millview, Willows and Rogina water billing records from Winter of 2019.
  - Material difference in water usage patterns found (see next slide)
  
- ✓ ESSSUs measured based on:
  - Residential: Number of residential dwelling units
  - Commercial: Sewer strength (low, moderate, medium, and high categories) and winter water usage relative to average residential customers
  - Current difference in commercial strength profile between the two agencies is very small

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## Cost Allocation Metrics

### STRENGTH FACTORS (mg/l)

	BOD*	TSS*
Residential	175	175
Commercial Low Strength	175	175
Commercial Moderate Strength	200	200
Commercial Medium Strength	500	500
Commercial High Strength	800	600

\* Based on existing ordinance assumptions and SWRCB guidelines

### SUMMARY OF METRICS

	Accounts		Monthly Indoor Water Usage		ESSSUs*	
	Count	Percent	HCF	Percent	Count	Percent
<b>District</b>	2,775	43.7%	36,745	51.8%	6,544	50.16%
<b>City</b>	3,582	56.3%	34,132	48.2%	6,503	49.84%
<b>Total:</b>	<b>6,357</b>		<b>70,877</b>		<b>13,047</b>	

(Default allocation in OA is 47% District : 53% City)

\* ESSSU percentages are projected to change over time based on forecasted growth.

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# Financial Plans

9

<b>Financial Reserves</b>													
<p><b>DISTRICT BEGINNING BALANCE</b> July 1, 2019</p> <hr/> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Cash and investments</td> <td style="text-align: right;">\$10,327,000*</td> </tr> <tr> <td>Restricted Cash</td> <td style="text-align: right;">\$0</td> </tr> <tr> <td style="text-align: right;"><b>Total:</b></td> <td style="text-align: right;"><b>\$10,327,000</b></td> </tr> </table> <p style="font-size: small; margin-top: 10px;">* This includes the \$4M from the settlement liability</p>	Cash and investments	\$10,327,000*	Restricted Cash	\$0	<b>Total:</b>	<b>\$10,327,000</b>	<p><b>CITY BEGINNING BALANCE</b> July 1, 2019</p> <hr/> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Cash and investments</td> <td style="text-align: right;">\$4,689,000**</td> </tr> <tr> <td>Restricted Cash (Fund 843)</td> <td style="text-align: right;">\$1,884,000</td> </tr> <tr> <td style="text-align: right;"><b>Total:</b></td> <td style="text-align: right;"><b>\$6,573,000</b></td> </tr> </table> <p style="font-size: small; margin-top: 10px;">** This does not include the \$4M settlement liability</p>	Cash and investments	\$4,689,000**	Restricted Cash (Fund 843)	\$1,884,000	<b>Total:</b>	<b>\$6,573,000</b>
Cash and investments	\$10,327,000*												
Restricted Cash	\$0												
<b>Total:</b>	<b>\$10,327,000</b>												
Cash and investments	\$4,689,000**												
Restricted Cash (Fund 843)	\$1,884,000												
<b>Total:</b>	<b>\$6,573,000</b>												

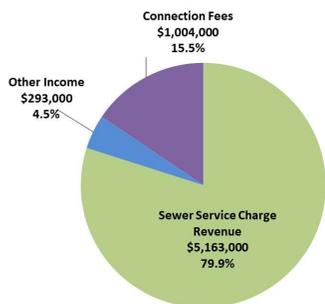
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## Revenues - FY2019/20 Budget

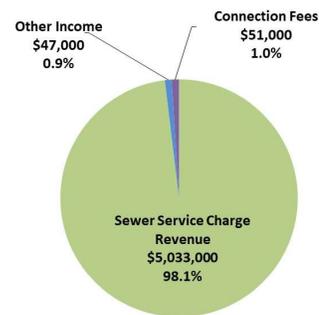
### District

Sewer Service Charge Revenue	\$5,163,000
Other Income	\$50,000
Other Operating Revenue	\$3,000
Interest Earnings	\$105,000
Property Tax	\$57,000
Special Tax	\$78,000
Connection Fees	\$1,004,000
<b>Total:</b>	<b>\$6,460,000</b>



### City

Sewer Service Charge Revenue	\$5,033,000
Other Income	\$4,000
Other Operating Revenue	\$19,000
Interest Earnings	\$24,000
Connection Fees	\$51,000
<b>Total:</b>	<b>\$5,131,000</b>



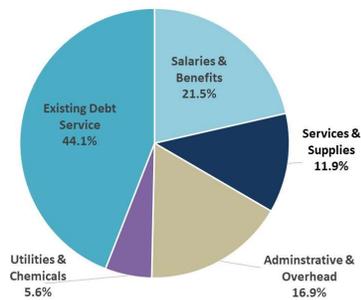
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## Operating Budget - FY2019/20 Budget

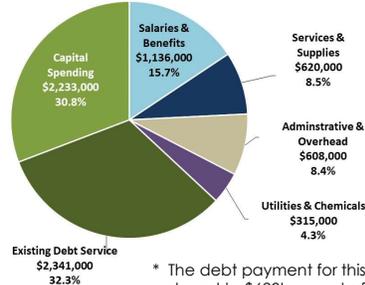
### District

Salaries and Benefits	\$1,153,000
Professional Services	\$517,000
Operating Supplies	\$145,000
Utilities and Chemicals	\$317,000
Administrative	\$185,000
Training	\$25,000
Billing	\$79,000
Legal Fees	\$315,000
Internal Allocation	\$206,000
Miscellaneous	\$60,000
Existing Debt Service	\$2,536,000
<b>Operating Budget &amp; Debt:</b>	<b>\$5,538,000</b>



### City

Salaries and Benefits	\$1,136,000
Professional Services	\$476,000
Operating Supplies	\$144,000
Utilities and Chemicals	\$315,000
Administrative	\$181,000
Training	\$25,000
Billing	\$97,000
Legal Fees	\$41,000
Internal Allocation	\$205,000
Miscellaneous	\$59,000
Existing Debt Service	\$2,341,000*
<b>Operating Budget:</b>	<b>\$5,020,000</b>



\* The debt payment for this year was recently reduced to \$623k as part of the refinancing terms

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## Debt Service

### 2006 ABAG Water and Wastewater Revenue Bond

- ✓ Previous debt service, allocated 52:48 by Operating Agreement
  - ✓ District: \$2,533,000 in FY2020; City: \$2,338,000 in FY2020
- ✓ Refinanced debt service, allocated 54:46 by rate study
  - ✓ District: \$2,007,000 in FY2021; City: \$1,995,000 in FY2021
  - ✓ Split will change annually going forward (per Operating Agreement)

### Debt Service Coverage Ratio

- ✓ 2006 Financing Agreement requires both the City and District to maintain coverage ratio of 1.20
- ✓ Rating agencies look favorably on utilities that maintain a coverage ratio above 1.50

### Settlement Agreement Payment Loan (City)

- ✓ The entire \$4M Settlement Agreement has been paid: \$1 million with cash reserves, another \$1.4 million with proceeds from the refinanced bond, and the remaining \$1.6 million was funded with an internal loan (10-year term at an interest rate of 2.0%, with annual payments of \$178,000)

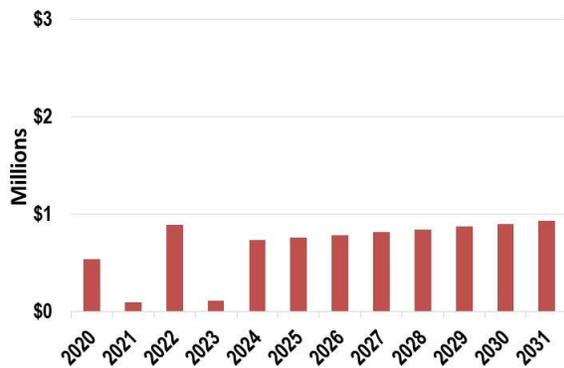
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## Capital Spending

(all project costs split except for the two indicated)

### District



### City



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## Reserve Targets

Formal reserve policies are the industry standard for protecting utilities against unforeseen circumstances.

Such policies are also beneficial for achieving a positive bond rating, which will help qualify the City for affordable debt.

### Recommended Policies:

#### Operating Reserve

- Maintain a minimum of at least 6 months of operating budget in the event of unexpected changes to cash flow or operating costs  
(Approximately \$1.5 million for the District and \$1.3 million for the City)

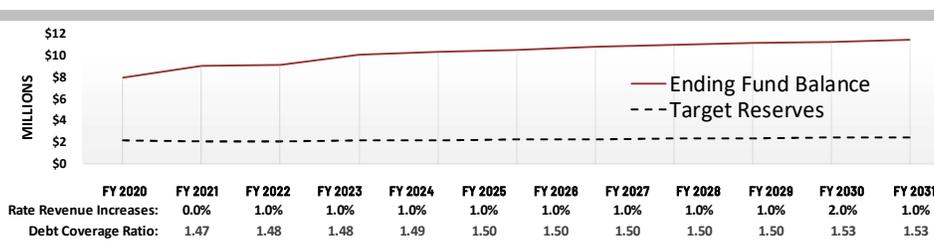
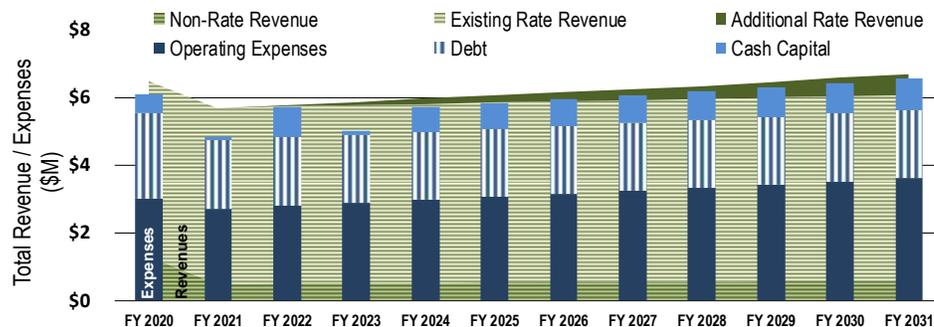
#### Emergency & Capital Improvement Reserve

- Maintain a minimum of 1 year of average annual capital spending to meet the cash flow requirements of capital spending (about \$650 thousand for both the District and City)

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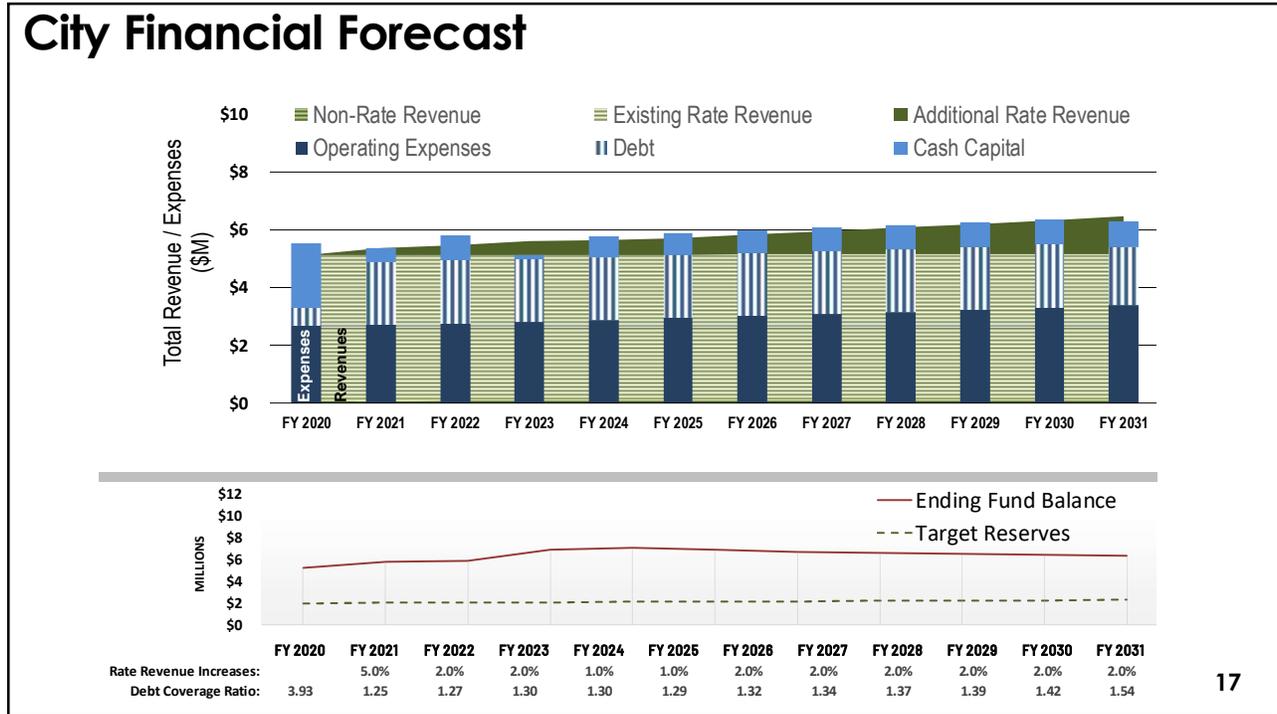
## District Financial Forecast



	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Rate Revenue Increases:	0.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	2.0%	1.0%
Debt Coverage Ratio:	1.47	1.48	1.48	1.49	1.50	1.50	1.50	1.50	1.50	1.53	1.53	

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# Cost of Service & Rate Design

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<b>Current District Rates</b>	<b>Current City Rates</b>
<ul style="list-style-type: none"> <li>✓ Residential                             <ul style="list-style-type: none"> <li>• Usage rates @ \$6.60 per HCF</li> <li>• Monthly Service charge of \$53.47 per dwelling unit</li> <li>• Monthly Service charge includes allowance of 3.4 HCF per dwelling unit</li> </ul> </li>   <li>✓ Commercial                             <ul style="list-style-type: none"> <li>• 4 classes based on sewage strength                                     <ul style="list-style-type: none"> <li>• Class 1 - \$9.69</li> <li>• Class 2 - \$10.36</li> <li>• Class 3 - \$18.32</li> <li>• Class 4 - \$23.60</li> </ul> </li> <li>• Minimum charge of \$53.47</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>✓ Residential                             <ul style="list-style-type: none"> <li>• Usage rates @ \$2.45 per HCF</li> <li>• Monthly Service charge of \$62.44 per dwelling unit</li> </ul> </li>   <li>✓ Commercial                             <ul style="list-style-type: none"> <li>• 4 classes based on sewage strength                                     <ul style="list-style-type: none"> <li>• Class 1 - \$9.80</li> <li>• Class 2 - \$10.47</li> <li>• Class 3 - \$18.52</li> <li>• Class 4 - \$23.85</li> </ul> </li> <li>• Minimum charge of \$62.44</li> </ul> </li> </ul>
<p><u>Miscellaneous:</u></p> <ol style="list-style-type: none"> <li>1) Accounts with negotiated special rates (recommend creating administrative record to demonstrate cost of service)</li> <li>2) City bills Mobile Homes as Commercial 1 (recommend treating as residential)</li> <li>3) City should continue to review that commercial customers are correctly classified</li> </ol>	
<b>19</b>	

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<b>Rate Design Recommendations</b>
<ol style="list-style-type: none"> <li>1. Cost allocation <u>methodology</u> and rate <u>structures</u> will be the same for the City and District                             <ul style="list-style-type: none"> <li>✓ The dollar amount of the rates will differ due to the differences in revenue requirements</li> </ul> </li> <li>2. Retain current customers classes (one Residential class &amp; four Commercial classes)</li> <li>3. Apply a fixed Monthly Service Charge to <u>all</u> customers                             <ul style="list-style-type: none"> <li>✓ Residential pays per dwelling unit</li> <li>✓ Commercial pays based on previous winter water usage</li> </ul> </li> <li>4. Eliminate the District's residential water usage "allowance"</li> <li>5. Measure winter water usage based on monthly average for January, February and March (City previously only used one month)</li> <li>6. Recalculate strength multiplier for commercial customers</li> </ol>
<b>20</b>

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### Sewer Customer Account Data and Estimated Wastewater Flows and Loadings

Customer Class	No. of Accts. (1)	No. of ESSFUs (1)	No. of ESSSUs (1)	Annual Indoor Water Usage (2)	Estimated Annual Wastewater Flow (3)	BOD Strength (3)	Annual BOD Loading (3)	SS Strength (3)	Annual SS Loading (3)
				hcf	MG	mg/l	lbs	mg/l	lbs
<b>Ukiah Valley Sewer District</b>									
<b>Residential</b>									
Single Family	2,291	2,291	2,291	185,741	138.93	175	202,775	175	202,775
Multi-Family	162	1,289	1,289	68,511	51.25	175	74,794	175	74,794
Mobile Homes	11	620	620	49,141	36.76	175	53,648	175	53,648
<b>Commercial</b>									
Low Strength	267	1,410	1,410	89,401	66.87	175	97,599	175	97,599
Moderate Strength	18	433	453	28,149	21.06	200	35,120	200	35,120
Medium Strength	5	52	82	6,015	4.50	500	18,762	500	18,762
High Strength	21	205	399	13,983	10.46	800	69,783	600	52,338
<b>District Totals:</b>	<b>2,775</b>	<b>6,301</b>	<b>6,544</b>	<b>440,941</b>	<b>329.82</b>		<b>552,482</b>		<b>535,036</b>
<b>City of Ukiah</b>									
<b>Residential</b>									
Single Family	2,724	2,724	2,724	184,342	137.89	175	201,248	175	201,248
Multi-Family	247	1,455	1,455	83,060	62.13	175	90,677	175	90,677
Mobile Homes	7	248	248	17,452	13.05	175	19,052	175	19,052
<b>Commercial</b>									
Low Strength	545	1,464	1,464	99,345	74.31	175	108,455	175	108,455
Moderate Strength	14	104	109	7,122	5.33	200	8,886	200	8,886
Medium Strength	9	51	81	3,464	2.59	500	10,805	500	10,805
High Strength	36	217	423	14,800	11.07	800	73,862	600	55,396
<b>City Totals:</b>	<b>3,582</b>	<b>6,263</b>	<b>6,503</b>	<b>409,585</b>	<b>306.37</b>		<b>512,985</b>		<b>494,520</b>

\* ESSFUs = equivalent sewer service flow units, equal to the sewage flows from a typical residential dwelling unit

\* ESSSUs = equivalent sewer service strength units, similar to an ESSSU but also considering sewer strength

**Footnotes:**

- (1) From the utility billing system for FY 19-20.
- (2) Water usage data from average winter usage from 2019 (January through March)
- (3) Based on existing ordinance assumptions and SWRCB guidelines.

### Determination of Rates

Customer Class	ESSFUs	Annual Indoor Water Use (hcf)	BOD Strength (mg/l)	SS Strength (mg/l)	Monthly Fixed Charges (\$/dwelling unit)	Usage Rates (1) (\$/hcf)	Total Fixed Charge Revenue	Total Usage Charge Revenue	Total Annual Rate Revenue
<b>District</b>									
<b>Residential</b>									
Single Family	2,291	185,741	175	175	\$45.86	\$3.61	\$1,260,886	\$671,179	\$1,932,065
Multi-Family	1,289	68,511	175	175	\$45.86	\$3.61	\$709,420	\$247,567	\$956,987
Mobile Homes	620	49,141	175	175	\$45.86	\$3.61	\$341,226	\$177,573	\$518,799
<b>Commercial</b>									
Low Strength	1,410	89,401	175	175	\$45.86	\$3.61	\$776,270	\$323,051	\$1,099,321
Moderate Strength	433	28,149	200	200	\$45.86	\$3.94	\$238,366	\$110,902	\$349,268
Medium Strength	52	6,015	500	500	\$45.86	\$7.86	\$28,549	\$47,255	\$75,804
High Strength	205	13,983	800	600	\$45.86	\$10.45	\$112,861	\$146,065	\$258,926
<b>Totals:</b>	<b>6,301</b>	<b>440,941</b>					<b>\$3,467,578</b>	<b>\$1,723,592</b>	<b>\$5,191,171</b>
<b>City</b>									
<b>Residential</b>									
Single Family	2,724	184,342	175	175	\$49.32	\$3.58	\$1,612,040	\$659,304	\$2,271,343
Multi-Family	1,455	83,060	175	175	\$49.32	\$3.58	\$861,056	\$297,066	\$1,158,122
Mobile Homes	248	17,452	175	175	\$49.32	\$3.58	\$146,764	\$62,417	\$209,182
<b>Commercial</b>									
Low Strength	1,464	99,345	175	175	\$49.32	\$3.58	\$866,212	\$355,308	\$1,221,521
Moderate Strength	104	7,122	200	200	\$49.32	\$3.90	\$61,482	\$27,775	\$89,257
Medium Strength	51	3,464	500	500	\$49.32	\$7.78	\$30,064	\$26,950	\$57,014
High Strength	217	14,800	800	600	\$49.32	\$10.34	\$128,622	\$153,075	\$281,698
<b>Totals:</b>	<b>6,263</b>	<b>409,585</b>					<b>\$3,706,241</b>	<b>\$1,581,895</b>	<b>\$5,288,135</b>

**Footnotes:**

- (1) The usage rate applies to 2019 winter water usage (the average of January through March).

<b>Year 1 Rate Comparison</b>			<b>Bill Impact</b>			
	<b>Current</b>	<b>Proposed</b>				
<b>District</b>			<b>District</b>			
<u>Monthly Service Charge*:</u>	\$53.47	\$45.86	<b>Customer</b>	<b>Current</b>	<b>Proposed</b>	<b>Change</b>
<u>Usage Rate:</u>			Single Family w/ 3 HCF (low):	\$50.83	\$56.70	\$5.87 11.6%
Residential:	\$6.60	\$3.61	Single Family w/ 6 HCF (average):	\$70.63	\$67.54	-\$3.09 -4.4%
Commercial 1:	\$9.69	\$3.61	Single Family w/ 12 HCF (high):	\$110.23	\$89.23	-\$21.00 -19.1%
Commercial 2:	\$10.36	\$3.94	Commercial 1 w/ 15 HCF (average):	\$145.35	\$175.27	\$29.92 20.6%
Commercial 3:	\$18.32	\$7.86	Commercial 1 w/ 42 HCF (average):	\$435.12	\$504.47	\$69.35 15.9%
Commercial 4:	\$23.60	\$10.45	Commercial 1 w/ 32 HCF (average):	\$586.24	\$509.68	-\$76.56 -13.1%
			Commercial 1 w/ 34 HCF (average):	\$802.40	\$629.59	-\$172.81 -21.5%
	<b>Current</b>	<b>Proposed</b>	<b>City</b>			
<b>City</b>			<b>Customer</b>	<b>Current</b>	<b>Proposed</b>	<b>Change</b>
<u>Monthly Service Charge*:</u>	\$62.44	\$49.32	Single Family w/ 3 HCF (low):	\$61.46	\$60.05	-\$1.41 -2.3%
<u>Usage Rate:</u>			Single Family w/ 6 HCF (average):	\$68.81	\$70.78	\$1.97 2.9%
Residential:	\$2.45	\$3.58	Single Family w/ 12 HCF (high):	\$83.51	\$92.23	\$8.72 10.4%
Commercial 1:	\$9.80	\$3.58	Commercial 1 w/ 15 HCF (average):	\$146.96	\$183.83	\$36.88 25.1%
Commercial 2:	\$10.47	\$3.90	Commercial 1 w/ 42 HCF (average):	\$439.74	\$528.31	\$88.57 20.1%
Commercial 3:	\$18.52	\$7.78	Commercial 1 w/ 32 HCF (average):	\$592.64	\$526.68	-\$65.96 -11.1%
Commercial 4:	\$23.85	\$10.34	Commercial 1 w/ 34 HCF (average):	\$810.90	\$646.74	-\$164.16 -20.2%
* Service Charge is per dwelling unit for residential and per ESSFU for commercial accounts (with a minimum charge of 1 ESSFU).						

<b>Next Steps</b>
<ol style="list-style-type: none"> <li>1. Direct staff to send Prop 218 Notices                             <ul style="list-style-type: none"> <li>• Separate notices for District and City</li> </ul> </li> <li>2. Receive final comments and finalize report</li> <li>3. Hold Public Hearings to adopt sewer rates                             <ul style="list-style-type: none"> <li>• Separate hearings by District Board and City Council</li> </ul> </li> <li>4. Implement new sewer rates on July 1, 2020</li> </ol>

# EXHIBIT D-5



City of Ukiah

&

Ukiah Valley Sanitation District

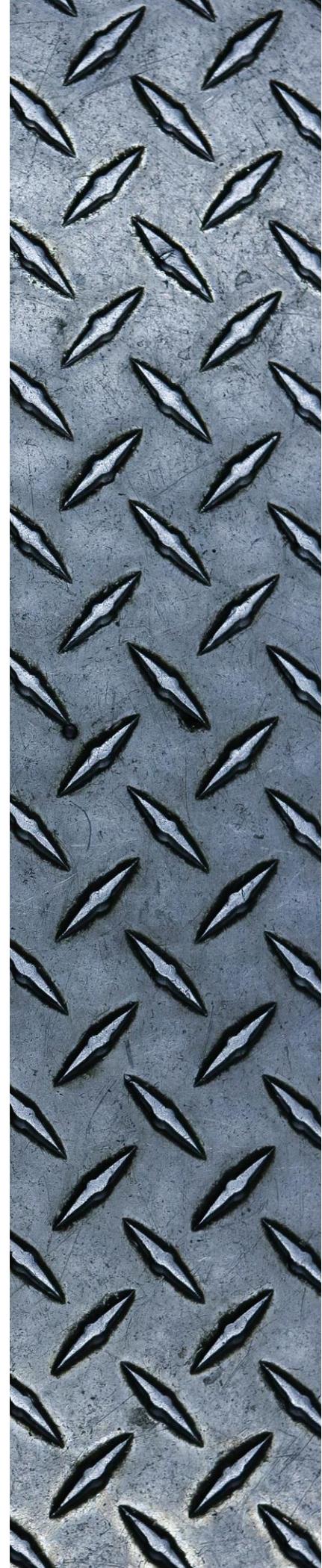
2020 Joint Sewer Rate Study

Final Report

April 24, 2020



THE REED GROUP, INC.





April 24, 2020

Mr. David Redding  
District Manager  
Ukiah Valley Sanitation District  
151 Laws Ave  
Ukiah, CA 95482

Mr. Sage Sangiacomo  
City Manager  
City of Ukiah  
300 Seminary Ave.  
Ukiah, CA 95482

Re: Final 2020 Joint Sewer Rate Study

Dear Mr. Buffalo and Mr. Redding,

Hildebrand Consulting and the Reed Group are pleased to present this 2020 Joint Sewer Rate Study (Study) performed for the City of Ukiah (City) and Ukiah Valley Sanitation District (District). We appreciate the fine assistance provided by you and all of the members of the City and District staff who participated in the Study.

If you or others at the City or District have any questions, please do not hesitate to contact me at:

[mhildebrand@hildco.com](mailto:mhildebrand@hildco.com)  
(510) 316-0621

We appreciate the opportunity to be of service to the City and/or District and look forward to the possibility of doing so again in the near future.

Sincerely,

Mark Hildebrand  
Hildebrand Consulting, LLC

Robert Reed  
The Reed Group, Inc.

Enclosure

## Executive Summary

Hildebrand Consulting, LLC and The Reed Group, Inc. (collectively “Consultant”) were retained by the City of Ukiah (City) and the Ukiah Valley Sanitation District (District) to conduct a Joint Sewer Rate Study (Study).

### STUDY

The City and District recently entered into a new Operating Agreement<sup>1</sup> which specifies how sewer collection and treatment services will be provided within the respective service areas and how costs will be fairly shared and distributed. The purpose of this “joint” sewer rate study is to develop new (and separate) sewer rates schedules appropriate for both the City and the District, which will be based on a consistent methodology and approach and aligned with the new Operating Agreement.

### SCOPE & METHODOLOGY

The scope of this Study was to prepare multi-year financial plans, develop a consistent cost-of-service analyses, review the existing rate structures, and propose 5-year rate schedules for both the City and District. This Study applied methodologies that are aligned with industry standard practices for rate setting as promulgated by the Water Environment Federation (WEF) and all applicable law, including California Constitution Article XIII D, Section 6(b), commonly known as Proposition 218.

---

<sup>1</sup> Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah

## **OPERATING AGREEMENT BACKGROUND**

The 2018 Operating Agreement between the City and the District includes a number of conditions that guide the approach to this Study. For example, the Operating Agreement specifies that budgeted operating costs are to be allocated to each party based on their proportionate use of the WWTP. For the purpose of performing this allocation of costs between the District and City, this Study defines an Equivalent Sewer Service Strength Unit (ESSSU) as the average winter water usage of a residential dwelling unit at residential strength. This term is not to be confused with the term “ESSU” (equivalent sewer service unit), which was established by the Operating Agreement for the purpose of defining the number Capacity Project units used by each utility.

## **FINANCIAL PLANS**

Financial plans were developed for both utilities, which provide a finance strategy that will enable both utilities to meet revenue requirements and financial performance objectives throughout the planning period while striving to minimize rate increases. Sewer Utility Operating Budget and Funds

### **Revenue**

Rate revenue is the revenue generated from customers for sewer service. The City collects all rate revenue from both City and District customers. Rate revenue received from District customers is allocated to the District and rate revenue received from City customers is allocated to the City. Rate revenue for both utilities is collected through a fixed “Base” charge and a variable “Usage” charge, although the rate structures between the City and the District are slightly different. This Study’s financial plans propose annual rate revenue adjustments that will meet the City and District’s respective revenue requirements.

### **Operating and Maintenance Expenses**

The combined operating and maintenance expenses include all ongoing collection, treatment, disposal, and administrative expenses. The ratio of ESSSUs between the City and the District are used to establish each utility's proportionate use of both the collection system and the WWTP for the purpose of allocating most annual budgeted operating costs. Most expenses are split based on the current ESSSU allocation (50.163% District : 49.837% City), while billing expenses are split based on the proportion of accounts (43.662% District : 56.338% City), and debt expenses are split as dictated by the Operating Agreement in FY 2019/20 (48.0% District : 52.0%) and based on the findings of this Study thereafter.

### **Debt Service**

Section II.D.2. of the Operating Agreement describes the prescribed methodology for allocating the debt service costs associated with the 2006 Bond. As detailed in the full report, this Study calculated a debt service allocation of 53.997% for the District and 46.003% for the City.

The City and District currently share responsibility for repayment of a 2006 Revenue Bond. The allocation of the costs associated with the 2006 Bond is described in Section 2.4. A pivotal topic for these financial plans has been the refinancing of the 2006 Bond, which has significantly reduced debt service obligations for both utilities. The District's annual debt service has decrease by approximately \$530 thousand and the City's annual debt service would decrease by over \$340 thousand<sup>2</sup>.

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<sup>2</sup> The change in the debt service for both entities is affected by the change in the allocation methodology. In addition, the District plans to use cash reserves to pay down \$2.5 million in outstanding principal and the City will fund \$1.4 million of its Settlement Agreement costs with bond proceeds as well as defer some of the debt service that was previously due in FY 2019/20.

**Capital Improvement Program**

For purposes of this Study, all planned capital projects were identified as either a shared cost (subject to the allocation based on relative ESSUs) or a City-only expense.

**PROPOSED RATE REVENUE INCREASES**

Based upon the financial data, assumptions, and reserve targets, this Study proposes a 5-year schedule of rate adjustments as detailed in the two tables below for the District and for the City.

**Recommended District Sewer Rate Revenue Increases<sup>3</sup>**

Rate Adjustment Date	Proposed Rate Revenue Increase
July 1, 2020	0.0%
July 1, 2021	1.0%
July 1, 2022	1.0%
July 1, 2023	1.0%
July 1, 2024	1.0%

Rate Adjustment Date	Proposed Rate Revenue Increase
July 1, 2020	5.0%
July 1, 2021	2.0%
July 1, 2022	2.0%
July 1, 2023	1.0%
July 1, 2024	1.0%

**Recommended City Sewer Rate Revenue Increases**

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<sup>3</sup> Recommended rate revenue increases for the District are based on best available information at this time, however District staff acknowledges that there are two future unknowns that may materially change the District’s revenue requirements in the next 5 years: (1) potential shared costs for operating and maintaining the recycled water system and (2) the transfer of ownership of a series of District accounts to the City (“detachment”).

## **COST OF SERVICE**

A cost-of-service analysis evaluates the cost of providing sewer service and proportionately allocates those costs to customer classes and rate structure components to ensure the proposed rate structure is (1) aligned with the costs of providing sewer service (2) equitable among all ratepayers, and (3) complies with Proposition 218. This Study employed well-established industry practices as recognized by the WEF, AWWA, and other accepted industry standards. After analyzing sewer system use characteristics for all customers within both service areas, unit costs are applied to the equivalent sewer service flow units<sup>4</sup> (ESSFUs), annual sewer flows, BOD loadings and SS loadings associated with each customer class to arrive at the allocation of total costs to each customer class. The table below presents the allocation of costs to each user class.

---

<sup>4</sup> A measure of sewer utility service based on the estimated volume of wastewater from an average residential dwelling

### Allocation of Costs to Users (District and City)

No. of ESSFUs	Water Usage	BOD Strength	SS Strength	Customer Class	Service Charge Costs			Allocation of Total Costs	
					Fixed Costs	Variable Costs			
					Flow	BOD	SS		
<b>District</b>									
				<b>Residential</b>	\$578.89/ ESSFU	\$1.19/ hcf	\$0.92/ lb	\$0.95/ lb	
2				Single-Family Detached	32	22		3	2
2				Medium-Density Residential		22			
2				Medium-Density Residential	3	3		2	
<b>Commercial</b>									
				Commercial		3		2	2
33	2	2	2	Medium-Density Residential	2	33	32	33	3
2				Medium-Density Residential	3		2		3
2	3	3		Commercial		3	322		2
<b>6,302</b>	<b>440,941</b>			<b>Totals:</b>	<b>\$3,648,004</b>	<b>\$524,677</b>	<b>\$509,245</b>	<b>\$509,245</b>	<b>\$5,191,171</b>
<b>City</b>									
				<b>Residential</b>	\$592.25/ ESSFU	\$1.31/ hcf	\$1.02/ lb	\$1.05/ lb	
2	3			Single-Family Detached	3	2	2	33	2
	3			Medium-Density Residential			2	2	
2				Medium-Density Residential		22	3		2
<b>Commercial</b>									
	3			Commercial		3	22	2	2
	22	2	2	Medium-Density Residential		33		2	3
	3			Medium-Density Residential	3			3	3
2				Commercial	2	2	3		3
<b>6,263</b>	<b>409,585</b>			<b>Totals:</b>	<b>\$3,709,229</b>	<b>\$536,895</b>	<b>\$521,104</b>	<b>\$521,104</b>	<b>\$5,288,332</b>

Footnotes:

\_\_\_\_\_

### RATE STRUCTURE RECOMMENDATIONS

The City and District currently have very similar rate structures with only a few minor differences. With the concurrence of both District and City staff, this Study recommends that the rate structures be modified to be identical (although the rates themselves will be different to reflect the different financial needs and objectives of each respective agency). The changes are not expected to be material for either party and having identical rate structures will help the parties coordinate business and rate decisions in the future.

All customers pay a fixed monthly Service Charge and a Consumption Rate. Residential customers will pay a Service Charge for each dwelling unit while Commercial customers

will pay a Service Charge for each ESSFU. The Consumption Rate for all customers is determined by multiplying the account’s winter water usage by the respective Consumption Rate for the customer classification (which accounts for sewer strength).

The tables below presents the proposed Service Charges and Consumption Rates for the next 5 years.

**District 5-Year Sewer Rate Schedule**

	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023	July 1, 2024
<b>Monthly Service Charge*:</b>	\$48.24	\$54.75	\$55.30	\$55.85	\$56.41
<b>Consumption Rate (per HCF):</b>					
Residential:	\$3.24	\$3.67	\$3.71	\$3.75	\$3.79
Commercial 1:	\$3.24	\$3.67	\$3.71	\$3.75	\$3.79
Commercial 2:	\$3.53	\$4.00	\$4.04	\$4.08	\$4.12
Commercial 3:	\$7.03	\$7.98	\$8.06	\$8.14	\$8.22
Commercial 4:	\$9.35	\$10.62	\$10.73	\$10.84	\$10.95

\* Service Charge is per dwelling unit for residential and per ESSFU for commercial accounts (with a minimum charge of 1 ESSFU).

**City 5-Year Sewer Rate Schedule**

	July 1, 2020	July 1, 2021	July 1, 2022	July 1, 2023	July 1, 2024
<b>Monthly Service Charge*:</b>	\$49.35	\$50.34	\$51.35	\$51.86	\$52.38
<b>Consumption Rate (per HCF):</b>					
Residential:	\$3.57	\$3.64	\$3.71	\$3.75	\$3.79
Commercial 1:	\$3.57	\$3.64	\$3.71	\$3.75	\$3.79
Commercial 2:	\$3.89	\$3.97	\$4.05	\$4.09	\$4.13
Commercial 3:	\$7.77	\$7.92	\$8.08	\$8.16	\$8.24
Commercial 4:	\$10.32	\$10.53	\$10.74	\$10.85	\$10.96

\* Service Charge is per dwelling unit for residential and per ESSFU for commercial accounts (with a minimum charge of 1 ESSFU).

**CONCLUSION**

This Study used methodologies that are aligned with industry standard practices for rate setting as promulgated by WEF, AWWA and all applicable laws, including

California's Proposition 218. The proposed annual adjustments to the rates proportionately assign costs to each customer class and customer based on service demands and will allow the City and District to continue to provide reliable and affordable sewer service to customers.

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**Schedule 1 – Detailed Allocation of Operational Expenses between District and City**

**Schedule 2 – City Cash Flow Pro Forma**

**Schedule 3 – District Cash Flow Pro Forma**

## List of Acronyms

AWWA	American Water Works Association
CIP	capital improvement program
DCR	debt service coverage ratio
ENR	<i>Engineering News Record</i> (periodical)
ESSFU	Equivalent sewer service flow unit, a measure of sewer utility service based on the estimated volume of wastewater from an average residential dwelling
ESSSU	Equivalent sewer service strength unit, a measure of sewer utility service based on the estimated volume and strength of wastewater from an average residential dwelling
ESSU	Capacity Project equivalent sewer service unit, as defined and applied by the Operating Agreement between the City and District in order to assign capacity to a connection or reserved for a connection
FY	fiscal year (which ends on June 30)
hcf	hundred cubic feet (i.e. 748 gallons)
MG	million gallons
WEF	Water Environment Federation
WWTP	Wastewater treatment plant

## **Section 1. INTRODUCTION**

Hildebrand Consulting, LLC and The Reed Group, Inc. (collectively “Consultant”) were retained by the City of Ukiah (City) and the Ukiah Valley Sanitation District (District) to conduct a Joint Sewer Rate Study (Study). This report describes in detail the assumptions, procedures, and results of the Study, including conclusions and recommendations.

### **1.1 SEWER UTILITY BACKGROUNDS**

Within the Ukiah Valley there are three agencies that provide wastewater treatment services: (1) City of Ukiah, (2) Ukiah Valley Sanitation District, and (3) Calpella County Water District. The City owns the collection system within a portion of its jurisdictional boundaries and a wastewater treatment plant (WWTP). The District owns the collection system within its jurisdictional boundaries, a part of which is within the City’s boundaries, (known as the “overlap area”). The District and City have entered into various agreements and amendments for the sharing of costs associated with the operation, maintenance, and rehabilitation of the sewer collection system and the WWTP, as well as administrative costs such as utility billing. At present the District does not have operations staff of its own; it therefore contracts with the City of Ukiah for the provision of wastewater services. The City has its own staff, equipment and facilities for management and operations of wastewater services within the City’s jurisdiction.

Calpella County Water District owns and operates its collection system and treatment plant and is not included as part of this Study.

## 1.2 RATE STUDY BACKGROUND

The City and District recently entered into a new Operating Agreement<sup>5</sup> which specifies how sewer collection and treatment services will be provided within the respective service areas and how costs will be fairly shared and distributed. The purpose of this “joint” sewer rate study is to develop new (and separate) sewer rates schedules appropriate for both the City and the District, which will be based on a consistent methodology and approach and aligned with the new Operating Agreement. The Study has been performed with equal input from both the City and District, including direction from the City and District staff, financial advisors, and lawyers provided during joint meetings and group conference calls.

## 1.3 SCOPE & OBJECTIVES OF STUDY

The scope of this Study was to prepare multi-year financial plans, develop a consistent cost-of-service analyses, review the existing rate structures, and propose 5-year rate schedules for both the City and District. The primary objectives of this Study were to:

- i. Establish a transparent and repeatable methodology for allocating operating and capital costs between the City and the District
- ii. Develop multi-year financial management plans for both the City and District that integrate operational and capital project funding needs
- iii. Identify future annual rate adjustments to sewer rates to help ensure adequate revenues to meet the respective utilities’ ongoing service and financial obligations
- iv. Determine the cost of providing sewer service to customers using industry-accepted methodologies

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<sup>5</sup> Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah.

- v. Recommend specific modifications to the existing rate structures in order to ensure that the proposed rates equitably recover the cost of providing service and comporting with industry standards and California’s legal requirements

## 1.4 STUDY METHODOLOGY

This Study applied methodologies that are aligned with industry standard practices for rate setting as promulgated by the Water Environment Federation (WEF) and all applicable law, including California Constitution Article XIII D, Section 6(b), commonly known as Proposition 218.

The Study began with reviewing billing data of all customers (both City and District) to identify the number of customers, water use, and estimated sewage volume and strength in both service areas (see Section 2). This data was used to calculate the respective number of “equivalent sewer service strength units” (ESSUs)<sup>6</sup> in both the City and District in order to allocate operating, debt and capital costs to each entity in accordance with the Operating Agreement (see Section 2).

The next step was to develop multi-year financial management plans (for both the City and the District) that determined the level of annual rate revenue required to cover estimated annual operating expenses, debt service (including coverage targets), and capital cost requirements while maintaining adequate reserves. The financial planning models were customized to reflect the financial dynamics of both utilities.

The respective revenue requirements calculated in the financial plans for fiscal year 2020/21 (FY 2020/21) were then used to perform detailed cost-of-service analyses. The cost-of-service analyses and rate structure designs were conducted based upon principles outlined by the WEF, legal requirements (Proposition 218 and relevant court

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<sup>6</sup> Not to be confused with “ESSU” as defined in the Operating Agreement, as explained in Section 2.1.

decisions) and other generally accepted industry practices to develop rates that reflect the cost of providing service.

Draft recommendations for the financial plans and updated rate structures were presented to the City Council and District Board on March 11. This final report contains minor modifications to the rates based on changes to some financial assumptions since that meeting. .

## **1.5 REPORT ORGANIZATION**

Section 2 addresses the relevant content of the Operating Agreement, including how operational expenses, debt service, and capital improvement costs are assigned to each the District and City, as well as how the Agreement's requirements have been interpreted by this Study. Section 3 presents the assumptions, methodology, and findings of the respective financial plans, including proposed debt strategies and rate revenue increases for both utilities. Section 4 describes the proportionate allocation of costs to specific customer classes (using an identical cost-of-service methodology for both utilities). Section 5 describes the proposed rate design structure and includes the proposed rate schedules for both utilities for a 5-year planning period. While the rate structures are identical for both utilities, there are differences in the actual rates due to differences in each utility's finances and customer profiles.

## Section 2. OPERATING AGREEMENT BACKGROUND

The 2018 Operating Agreement between the City and the District includes a number of conditions that guide the approach to this Study. The pertinent conditions are described below, including a description of how those conditions have been interpreted for the purposes of this Study.

### 2.1 EQUIVALENT SEWER SERVICE UNITS

The City operates the combined sewer system as one system with the combined treatment and collection costs apportioned between the City and the District. Section II.D.1.a.(1) of the Operating Agreement specifies that budgeted operating costs are to be allocated to each party based on their proportionate use of the WWTP, as measured by water consumption and relative strength of sewage discharged to the WWTP by the customers of each utility. For the purpose of performing this allocation of costs between the District and City, this Study defines an Equivalent Sewer Service Strength Unit (ESSSU) as the average winter water usage of a residential dwelling unit at residential strength. This term is not to be confused with the term “ESSU” (equivalent sewer service unit), which was established by the Operating Agreement for the purpose of defining the number Capacity Project units used by each utility. Section II.E.2 of the Operating Agreement specifies how ESSU values are calculated based on factors such as the number of bedrooms, which is not the case for the determination of ESSSUs for rate setting purposes.

This Study allocates one (1) ESSSU to each residential dwelling unit, including single family homes, multifamily dwellings, and mobile home dwellings. These data were extracted from the City’s sewer billing data for FY 2019/20. A summary of all residential dwelling units by utility can be found in **Table 1**.

ESSSU values are assigned to commercial (i.e. non-residential) accounts by comparing the winter water use and sewer strength of each commercial account to an average residential dwelling. The average quantity of water used by residential dwelling customers was calculated based on water usage records from the City's water utility, Millview County Water District, Willow County Water District, and Regina Water Company during the winter months of January, February, and March. The average monthly winter usage across all residential dwelling units in the winter of 2019 was determined to be 5.68 hundred cubic feet (hcf).

As detailed in Section 4, the commercial strength classifications include low, moderate, medium, and high and were assigned based on the existing commercial classifications of each commercial account. As required by the Operating Agreement, and consistent with common industry practice, each strength classification is assigned a numerical factor designed to fairly capture the relative strength of the discharge of each respective class. The calculations regarding the application of the strength factors are detailed in Section 4.

The ESSSU assignment for each commercial account is calculated by comparing the account's winter water usage to the average water usage by residential dwellings, and then multiplied by the numerical strength factor assigned to the commercial classification. For example, a commercial medium strength commercial account with month winter water usage of 11.36 hcf would be assigned 3.10 ESSSUs (11.36 hcf divided by 5.68 hcf x 1.552<sup>7</sup>).

See **Table 1** for a summary of all ESSSUs by customer class and by utility.

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<sup>7</sup> Medium Strength Commercial has a strength factor of 1.552, see Section 4.5.

Table 1. Summary of Accounts, Dwelling Units and ESSSUs by Utility

District	Accounts	Dwelling Units	ESSSUs	
			□ □ □ □ □	□
□ □ □ □ □ □ □ □ □ □	2,200	2,200	2,200	□ □ □ □ □
M □ □ □ □ □ □ □ □ □ □	□ □ 3	□ □ 2 □ □	□ □ 2 □ □	□ □ □ □ □
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<b>District Totals:</b>	<b>2,776</b>	<b>4,201</b>	<b>6,532</b>	<b>50.163%</b>
<b>City</b>				
□ □ □ □ □ □ □ □ □ □	2,200	2,200	2,200	2,200
M □ □ □ □ □ □ □ □ □ □	2 □ □	□ □ □ □ □	□ □ □ □ □	□ □ □ □ □
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□ □ □ □ □ □ □ □ □ □ □ □ □ □	3 □	2 □ □	□ □ 2	3 □ 2 □
<b>City Totals:</b>	<b>3,582</b>	<b>6,263</b>	<b>6,490</b>	<b>49.837%</b>

## 2.2 ALLOCATION OF OPERATING COSTS

The ratio of ESSSUs shown in Table 1 are used to establish each utility’s proportionate use of both the collection system and the WWTP for the purpose of allocating annual budgeted operating costs. The exception to this rule are costs related to billing and collection of revenue (which are allocated based on the relative number of accounts in each utility) and costs that are specified to be borne entirely by one utility or the other<sup>8</sup>.

<sup>8</sup> The only costs that were borne entirely by one utility or the other were specific legal fees and costs associated with the Settlement Agreement. Numerous sources of non-rate revenue were allocated

As part of this Study, Consultant reviewed the detailed operating budgets with both City and District staff to ascertain the appropriate allocation methodology of each budgetary line-item. The allocation of annual operating costs are detailed in Schedule 1 (at the end of this report), which shows that most revenues and some expenses are designated as either for the District or for the City. Most expenses are split based on the current ESSSU allocation (50.163% District : 49.837% City, see Table 1), while billing expenses are split based on the proportion of accounts (43.662% District : 56.338% City), and debt expenses are split as dictated by the Operating Agreement in FY 2019/20 (48.0% District : 52.0%) and based on the findings of this Study thereafter (see Section 2.4).

### **2.3 ALLOCATION OF CAPITAL COSTS**

Section II.D.3.a. of the Operating Agreement states that capital improvement costs that benefit both the District and the City are subject to cost allocation using the allocation methodology (as described in the previous paragraph). The Operating Agreement describes a number of principals for identifying and negotiating capital improvement costs, which are beyond the scope of this report. It is anticipated that the allocation of capital costs will be a process that will be repeated annually between the City and the District. For purposes of this Study, all planned capital projects were identified as either a shared cost (subject to the allocation based on relative ESSSUs) or a City-only expenditure. No projects were identified as District-only. These projects have been summarized in Table 5.

### **2.4 ALLOCATION OF DEBT**

Section II.D.2. of the Operating Agreement describes the prescribed methodology for allocating the debt service costs associated with the existing 2006 Bond. In FY 2018/19

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directly to one utility of the other, such as miscellaneous fees, property tax revenue, and interest earnings.

and FY 2019/20 the debt service on the 2006 Bond was split 52.0% City, 48.0% District. Beginning in FY 2020/21 25.8414% of the existing debt (the “Capacity” portion) is to be allocated 65% to the District and 35% to the City. The remaining 74.1586% (the “Upgrade/Rehabilitation” portion) is to be allocated based on each utility’s proportionate share of winter water usage and relative strength of sewage discharge to the WWTP (i.e. based on the relative number of ESSSUs). With the current ESSSU ratio of 50.163% : 49.837% (see Table 1), the resultant debt service allocation is 53.997% for the District and 46.003% for the City.

The City and District have worked together to refinance the 2006 Bond to take advantage of attractive interest rates. Going forward, each entity will be responsible for its own debt service obligations. Debt service schedules for the new debt have been incorporated in the financial plans as provided by the District’s and City’s respective financial advisors. The City included a portion of its Settlement Agreement costs in the City’s portion of the refinanced bond.

## Section 3. FINANCIAL PLANS

This section presents the financial plans developed for both utilities, including a description of the source data and financial assumptions. This section concludes with 5-year plans for sewer rate adjustments. Schedules 1 through 3 (attached at the end of this report) include detailed data supporting the financial plans discussed herein.

This Study's 10-year financial plans were developed through interactive work sessions with City and District staff. As a result of this process, the Study has produced robust financial plans that will help enable both utilities to meet revenue requirements and financial performance objectives throughout the planning period while striving to minimize rate increases. Financial performance objectives include covering all anticipated operating, maintenance, debt service, and capital program costs; maintaining prudent financial reserves; and meeting debt service coverage ratio targets.

### 3.1 FINANCIAL DATA & ASSUMPTIONS

The City and District provided budgeted operating costs for the current fiscal year, a multi-year capital improvement program (CIP), and outstanding debt service obligations. City and District staff also assisted in confirming other assumptions and policies, such as operating and capital reserve targets, debt service coverage targets, escalation rates for operating costs, and refinanced debt (all of which are described in the following subsections).

### 3.2 SEWER UTILITY OPERATING BUDGET AND FUNDS

This Study considered the operating budgets for both the City and the District since all costs associated with sewer operations are subject to cost allocation. The allocation of each utility's operating budget is described below and detailed in **Schedule 1**.

### 3.2.1 DISTRICT OPERATING EXPENSES AND REVENUES

The District provided its *budgeted* expenditures for FY 2019/20, which were used as the starting point for forecasting District costs over the 10-year planning period. While some costs are split between the District and the City entirely based on the ESSSU allocation methodology, other costs are borne entirely by the District (largely legal fees), and yet other costs are partially directly borne by the District and the remaining balance is split with the City based on the ESSSU methodology.

The District provided its *actual* revenues for FY 2018/19, which were used as the starting point for forecasting District costs over the 10-year planning period. All revenues received directly by the District (as opposed to District rate revenue first collected by the City) are kept by the District (not shared). These revenues include property taxes, interest earnings, and other revenue.

### 3.2.2 CITY OPERATING EXPENSES AND REVENUES

The City's sewer utility is comprised of nine funds that are used to manage the sewer utility's use of funds in a transparent manner. The following describes the purpose of each fund and how this Study's financial plan model reflected the use of those funds.

**Fund 840** – The **City Sewer Operating Fund** is the primary operating fund of the City's sewer utility and tracks most operating and maintenance expenditures that are shared by the City and the District. Fund 840 also collects all revenue (including rate revenue) that is designated for the City.

**Fund 940** – The **District Sewer Operating Fund** is used to track rate revenue and operating costs that are designated for the District only.

**Fund 841** – The **Sewer Debt Service Fund** is used to track all existing debt (both City and District) and is used as a “clearing fund” to allocate those costs, as appropriate, to either Fund 840 or Fund 940.

**Fund 842** – The **City Sewer Rate Stabilization Fund** holds reserves, including reserves that are conditions for debt.

**Fund 942** – The **District Sewer Rate Stabilization Fund** holds reserves, including reserves that are conditions for debt.

**Fund 843** – The **City Connection Fee Fund** holds funds from connect fee revenues, reserves, which are restricted for the purpose of paying for growth-related sewer system capital projects.

**Fund 943** – The **District Connection Fee Fund** holds funds from connect fee revenues, reserves, which are restricted for the purpose of paying for growth-related sewer system capital projects.

**Fund 844** – The **City Capital Reserve** holds unrestricted funds for the use of paying for encumbered capital projects (see Section 3.2.4).

**Fund 944** – The **District Capital Reserve** holds unrestricted funds for the use of paying for encumbered capital projects.

While the financial plan models for this Study was developed with an understanding of these funds, the models did not attempt to replicate the internal movement of all moneys between funds.

### 3.2.3 BEGINNING FUND BALANCES

The FY 2019/20 beginning fund balances for the District and the City are summarized in **Table 2** and **Table 3** respectively. The District’s fund balances are not reported in the “940” fund series nomenclature because the District’s books simply recognizes the sum of all the District’s cash and equivalents (regardless of where the monies are held).

**Table 2: District Beginning Cash Balance (FY 2019/20)**

Cash and investments	\$6,327,000
Restricted Cash	\$0
<b>Total:</b>	<b>\$6,327,000</b>

**Table 3: City Beginning Cash Balance (FY 2019/20)**

<b>FUND</b>	<b>BALANCE</b>
Fund 840	\$1,714,000
Fund 841	\$0
Fund 842	\$2,975,000
Fund 843	\$1,884,000
Fund 844	\$0
<b>TOTAL:</b>	<b>\$6,573,000</b>

### 3.2.4 RESERVE TARGETS

Reserves for utilities are cash balances that are maintained in order to (a) comply with contractual obligations (e.g. bond covenants), (b) protect the utility from unexpected financial events, and/or (c) accommodate operational and capital program cash flow needs. Often multiple reserves are maintained, each with a specific function. In addition to the direct benefits of financial stability, reserves can help utilities obtain higher credit rankings, which can then help qualify the utility for cheaper debt. Credit rating agencies evaluate utilities on their financial stability, which includes adherence to formally adopted reserve targets.

The City has adopted financial management policies which include guidance with respect to reserve levels. While the District has not formally adopted such policies, the City's policies will be followed for both entities for purposes of this Study.

The City's policies call for City enterprise funds (including the sewer utility) to maintain a minimum working capital balance of at least 25 percent of operating expenses. The primary purpose of this balance is to set aside funds to maintain cash balances sufficient to pay expenses as needed and to provide for unanticipated or emergency expenses that could not be reasonably foreseen during the preparation of the budget.

The City's financial policies also require that fund balances and retained earnings should be sufficient to meet debt service reserve requirements, reserves for encumbrances (see Fund 844 and Fund 944), funding requirements for projects approved in prior years that are carried forward (see Fund 844 and Fund 944), and established rate stabilization reserves (as required by bond covenant, see Fund 842 and Fund 942).

The above policies are generally consistent with Consultant's industry experience for similar systems. In order to further strengthen the current reserve policies, this Study recommends that (1) the minimum working capital balance be raised to 50 percent of operating expenses (which is common for smaller utilities) and (2) establish a Capital Reserve target equal to the average annual planned capital spending (\$670 thousand for the District and \$646 thousand for the City). The working capital reserve ensures continuity of service regardless of short-term changes in cash flow or sudden increases in operating costs. The Capital Reserve is designed to smooth the inherent variability of the capital spending program. In other words, this reserve would be drawn down during years of higher-than-average capital spending and conversely the reserve would be built up during years when capital spending is below average. Such an approach can help reduce the need for large rate adjustments and help ensure continuous funding for capital replacement and rehabilitation projects.

In addition to the above, the District has created a Rate Stabilization Reserve of approximately \$2 million (one year of debt service) as part of the recently refinanced bond (the City's refinancing terms did not include a Rate Stabilization Reserve).

Building on the City's existing reserve policies would establish reserves that are aligned with best practices as reported by reserve studies conducted by the American Water

Works Association (AWWA), and healthy reserve levels for public utilities per the evaluation criteria published by rating agencies (e.g. Fitch, Moody's, and Standard & Poor's).

### 3.2.5 CUSTOMER GROWTH

Future customer growth affects this Study in terms of (1) anticipated connection fee revenue, (2) increase in rate revenue, and (3) changes in the ratio of ESSUs between the City and the District. Based on recent connection fee revenue and known difference in growth potential, this Study assumes that the District's growth rate (assumed to be 0.55% per year) will out-pace the City's growth rate (assumed to be 0.08% per year). As a result, the District's ESSU ratio (currently at 50.16%) is forecasted to slowly increase over time at a rate of 14 basis points per year (while the City ratio decreases at the same pace).

### 3.2.6 RATE REVENUES

Rate revenue is the revenue generated from customers for sewer service. The City collects all rate revenue from both City and District customers. Rate revenue received from District customers is allocated to the District (in Fund 940) and rate revenue received from City customers is allocated to the City (in Fund 840). Rate revenue for both utilities is collected through a fixed "Base" charge and a variable "Consumption" charge, although the rate structures between the City and the District are slightly different (see Section 5.1).

This Study's financial plans propose annual rate revenue adjustments that will meet the City and District's respective revenue requirements. Budgeted and projected rate revenues are listed in **Schedule 2** (District)<sup>9</sup> and **Schedule 3** (City).

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<sup>9</sup> The rate revenues in Schedule 2 and Schedule 3 includes the proposed rate adjustment recommended by this Study, as described in Section 3.3.

### 3.2.7 CONNECTION FEE REVENUE

Both the City and the District charge a connection fee to new development as a condition for connecting to the sewer system. By law (see California Government Code 66013), connection fee revenue is required to be used “solely for the purposes for which the charges were collected” (i.e. growth-related capital projects). Both the City and the District have indicated that connection fee revenues (and existing reserves from those revenues) are eligible to pay for the Capacity portion of the 2006 Bond debt service (i.e. 25.8% of the debt service). Based on those instructions, this Study uses available connection fee revenues and reserves to pay for the Capacity portion of the existing debt.

### 3.2.8 NON-RATE REVENUES

In addition to rate revenue and connection fee revenue, both utilities receive other revenue, including miscellaneous fees, interest earnings on investments, and property tax revenue (District only). Estimates of future interest income were calculated annually based upon estimated average fund balances and historic effective return on cash and invested funds (1.66% for the District and 0.36% for the City). Projections of all other non-rate revenues were based on FY 2018/19 actual revenues for the District and based on FY 2019/20 budgeted revenue for the City.

All revenues for the District and City are depicted below in Figure 1 and Figure 2 respectively, and detailed in **Schedule 2** (District) and **Schedule 3** (City). Note that the connection fee revenue for the District in FY 2019/20 is unusually high due to a large development paying the fees in the current year.

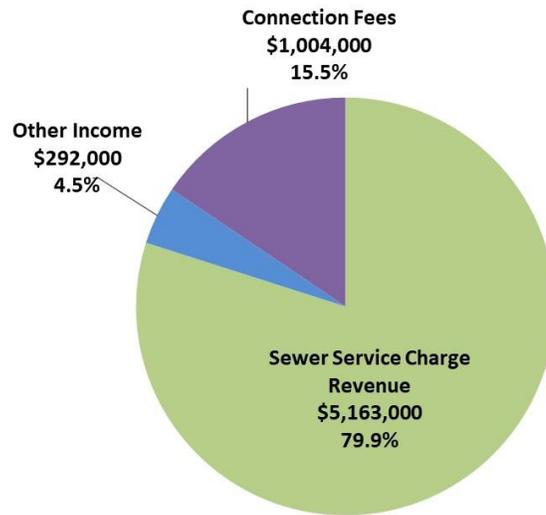


Figure 1: District Revenue Categories (FY 2019/20)

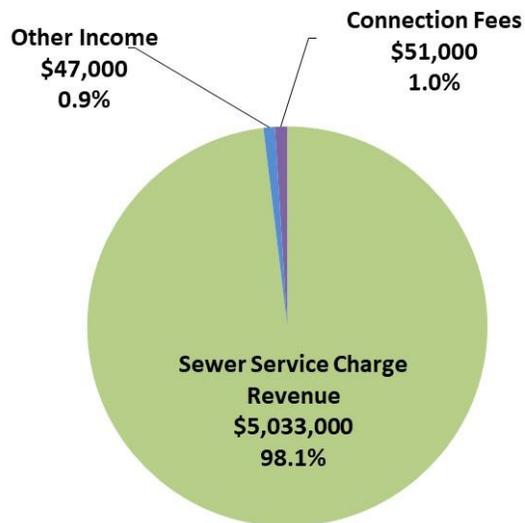


Figure 2: City Revenue Categories (FY 2019/20)

### **3.2.9 OPERATION AND MAINTENANCE EXPENSES**

The combined operating and maintenance expenses include all ongoing collection, treatment, disposal, and administrative expenses. The annual operating and maintenance costs for this Study are based on the City and District's FY 2019/20 budgets and are adjusted for future years based on inflation (see Section 3.2.10). Operating costs are allocated between the City and District as described in Section 2.2.

### **3.2.10 COST ESCALATION**

Annual cost escalation factors for the various types of expenses were developed based upon a review of historical inflation trends, published inflation forecasts, industry experience, and discussions with District and City staff. During the projection period, all operating expenses are projected to increase at 3.0% per year while capital costs are projected to increase at 3.5% per year.

### **3.2.11 DEBT SERVICE**

The City and District currently share responsibility for repayment of a 2006 Revenue Bond. The allocation of the costs associated with the 2006 Bond is described in Section 2.4. A pivotal topic for these financial plans has been the refinancing of the 2006 Bond, which has significantly reduced debt service obligations for both utilities. Based on projected debt service schedules provided by the City's and District's respective financial advisors, the District's annual debt service would decrease by approximately \$530 thousand<sup>10</sup> and the City's annual debt service would decrease by more than \$340 thousand.

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<sup>10</sup> The change in the debt service for both entities is affected by the change in the allocation methodology (see Section 2.4). In addition, the District plans to use cash reserves to pay down \$2.5 million in outstanding principal and the City will fund \$1.4 million of its Settlement Agreement costs with bond proceeds as well as defer some of the debt service that was previously due in FY 2019/20.

The financial plans for this Study have accounted for the refinancing of the 2006 Bond and debt repayment schedules provided by the City’s and District’s respective financial advisors. The terms include the debt service coverage ratio targets (1.30 for the City, 1.50 for the District) and the District’s principal payment of \$2.5 million from existing cash reserves. The debt repayment schedules are shown in **Table 4** (both City and District), based on the Closing Memos provided by the City and District’s financial advisors (with terms of 2.42% interest with a 15 year repayment term).

**Table 4: Debt Service Schedule for Refinanced Bond**

	District			City		
	Principal	Interest	Total	Principal	Interest	Total
FY 2020/21	\$1,380,000	\$608,550	\$1,988,550	\$1,390,000	\$608,722	\$1,998,722
FY 2021/22	\$1,430,000	\$563,074	\$1,993,074	\$1,436,000	\$562,965	\$1,998,965
FY 2022/23	\$1,466,000	\$528,250	\$1,994,250	\$1,471,000	\$528,008	\$1,999,008
FY 2023/24	\$1,504,000	\$492,543	\$1,996,543	\$1,507,000	\$492,192	\$1,999,192
FY 2024/25	\$1,541,000	\$455,928	\$1,996,928	\$1,543,000	\$455,505	\$1,998,505
FY 2025/26	\$1,580,000	\$418,406	\$1,998,406	\$1,581,000	\$417,934	\$1,998,934
FY 2026/27	\$1,621,000	\$379,904	\$2,000,904	\$1,620,000	\$379,444	\$1,999,444
FY 2027/28	\$1,658,000	\$340,458	\$1,998,458	\$1,659,000	\$339,998	\$1,998,998
FY 2028/29	\$1,698,000	\$300,104	\$1,998,104	\$1,700,000	\$299,608	\$1,999,608
FY 2029/30	\$1,740,000	\$258,746	\$1,998,746	\$1,741,000	\$258,226	\$1,999,226
FY 2030/31	\$1,787,000	\$216,360	\$2,003,360	\$1,783,000	\$215,840	\$1,998,840
FY 2031/32	\$1,832,000	\$172,836	\$2,004,836	\$1,827,000	\$172,425	\$1,999,425
FY 2032/33	\$1,875,000	\$128,236	\$2,003,236	\$1,871,000	\$127,945	\$1,998,945
FY 2033/34	\$1,921,000	\$82,583	\$2,003,583	\$1,917,000	\$82,389	\$1,999,389
FY 2034/35	\$1,972,000	\$35,792	\$2,007,792	\$1,964,000	\$35,719	\$1,999,719

The City is obligated to pay the District \$4 million as a result of the Settlement Agreement. The City has paid \$1 million with cash reserves, intends to fund another \$1.4 million with proceeds from the refinanced bond, and will fund the remaining \$1.6 million with an internal loan which will be repaid over a 10-year period at an interest rate of 2.0%. The City’s financial advisor advised Hildebrand Consulting that the internal loan repayment expense is subordinate to all external debt and therefore is not included in the debt service coverage ratio in this Study.

### 3.2.12 DEBT SERVICE COVERAGE

Debt service coverage is a measurement of the cash flow available to pay current debt obligations. The formula is net operating income (i.e., gross income minus operating expenses) divided by annual debt service. A debt service coverage ratio of 1.0 means that a utility has exactly enough money to pay its debt service after paying its operating expenses. The 2006 Bond included covenants that require the City and District to each maintain a minimum debt service coverage ratio of 1.25. Maintaining a higher debt service coverage ratio is recommended in order to access more favorable borrowing terms in the future. Based on recently published guidance from Fitch Ratings<sup>11</sup>, utility systems with *midrange* financial profiles should maintain a DCR greater than 1.50 times annual debt service.

Based on guidance provided by the City's and District's financial advisors, these financial plans target minimum debt service coverage ratios of 1.30 for the City and 1.50 for the District<sup>12</sup>.

### 3.2.13 CAPITAL IMPROVEMENT PROGRAM

As discussed in Section 2.3, the combined sewer system's capital spending is allocated to the City and the District based on terms of the Operating Agreement. Table 5 provides a summary of all capital projects planned through FY 2022/23. Capital spending for FY 2023/24 and beyond is assumed to be equal to the average spending from FY 2019/20 to FY 2022/23 (\$1.316 million).

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<sup>11</sup> As published on July 31, 2013.

<sup>12</sup> Hildebrand Consulting and The Reed Group are not financial advisors and are therefore not permitted to provide this type of financial guidance to our clients.

**Table 5: Capital Improvement Schedule (FY 2019/20 through FY 2022/23)**

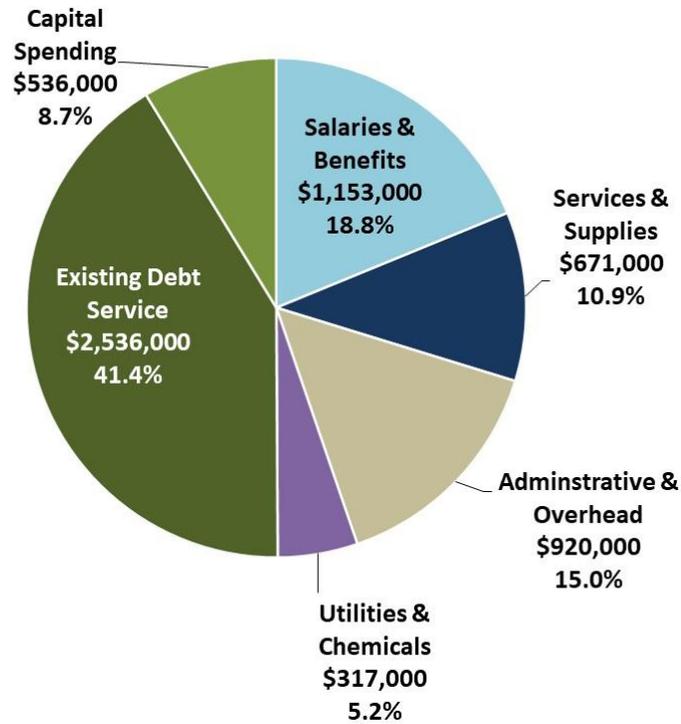
<b>Project Name</b>	<b>Split</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>	<b>FY 2021/22</b>	<b>FY 2022/23</b>
<b>FACILITIES/BUILDINGS/LAND</b>					
Upgrade HVAC Units on Buildings	Shared	\$ -	\$ -	\$ 150,000	\$ -
<b>INFORMATION TECHNOLOGY</b>					
Utility Billing CIS Replacement	Shared	\$ -	\$ -	\$ -	\$ -
<b>INFRASTRUCTURE</b>					
Chlorine Residual Valve/Alarm on Discharge	Shared	\$ 150,000	\$ -	\$ -	\$ -
Dora Street Utility Improvement Project- Water & Sewer	City only	\$ -	\$ 400,000	\$ -	\$ -
Downtown Streetscape Utility Replacement- Water & Sewer	City only	\$ 1,700,000	\$ -	\$ -	\$ -
Belt Filter Press Replacement	Shared	\$ 500,000	\$ -	\$ -	\$ -
Replace Heat Exchangers	Shared	\$ -	\$ -	\$ -	\$ -
Telemetry	Shared	\$ 30,000	\$ -	\$ -	\$ -
<b>STREETS &amp; RIGHTS-OF-WAY</b>					
Asphalt Zipper - Shared Cost	Shared	\$ -	\$ -	\$ -	\$ 40,000
Asphalt Roller - Shared Cost	Shared	\$ -	\$ -	\$ -	\$ 66,000
Asphalt Paver - Shared Cost	Shared	\$ -	\$ -	\$ -	\$ 70,000
Vactor Replacement - Shared Cost	Shared	\$ -	\$ 150,000	\$ -	\$ -
Water Tender - Shared Cost	Shared	\$ -	\$ 35,000	\$ -	\$ -
Ford/Orchard Lift Station Upgrade	Shared	\$ 100,000	\$ -	\$ -	\$ -
Replace Water/Sewer Operations Call Truck - Shared Cost	Shared	\$ -	\$ -	\$ -	\$ 30,000
Telescoping Lift	Shared	\$ 12,000	\$ -	\$ -	\$ -
Digester Rehabilitation and Methane Scrubber	Shared	\$ -	\$ -	\$ 1,500,000	\$ -
TFSC REXA Valves	Shared	\$ 30,000	\$ -	\$ -	\$ -
Field Analyzer Installation	Shared	\$ 25,000	\$ -	\$ -	\$ -
SCADA Upgrade at Waste Water Treatment Plant	Shared	\$ 200,000	\$ -	\$ -	\$ -
VFD Installation at Wastewater Treatment Plant	Shared	\$ -	\$ -	\$ 55,700	\$ -
Utility Task Vehicle	Shared	\$ 22,000	\$ -	\$ -	\$ -
<b>Total:</b>		<b>\$ 2,769,000</b>	<b>\$ 585,000</b>	<b>\$ 1,705,700</b>	<b>\$ 206,000</b>
<b>Total after escalation:</b>		<b>\$ 2,769,000</b>	<b>\$ 585,000</b>	<b>\$ 1,765,400</b>	<b>\$ 228,396</b>
<b>City Total:</b>		<b>\$ 2,224,898</b>	<b>\$ 490,838</b>	<b>\$ 866,843</b>	<b>\$ 112,146</b>
<b>District Total:</b>		<b>\$ 544,102</b>	<b>\$ 94,162</b>	<b>\$ 898,557</b>	<b>\$ 116,249</b>

**3.2.14 FUTURE BORROWING ASSUMPTIONS**

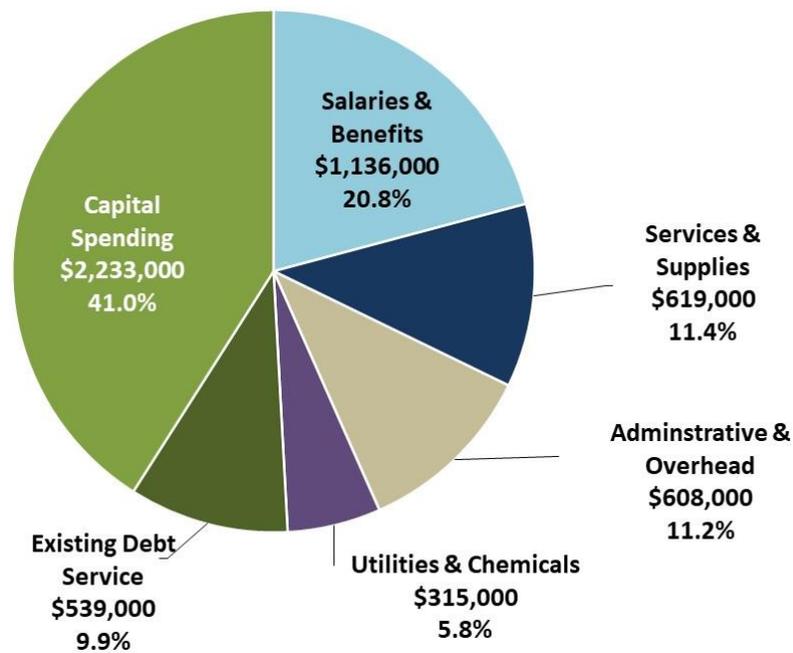
Aside from the City’s financing of the Settlement Agreement (see Section 3.2.11), this Study does not propose any new debt in order to finance the costs of future capital projects. Debt financing is not utilized because none of the capital projects during the planning period are expected to materially impact cash reserves and it is more cost effective to fund ongoing rehabilitation and replacement projects on a pay-as-you-go basis.

**3.2.15 EXPENDITURE SUMMARY**

The District’s FY 2019/20 budgeted operating, capital and debt expense categories are depicted in **Figure 3** and detailed in **Schedule 2**. The City’s FY 2019/20 budgeted operating, capital and debt expense categories are depicted in **Figure 4** and detailed in **Schedule 3**.



**Figure 3: District Budgeted Expense Categories (FY 2019/20)**



**Figure 4: City Budgeted Expense Categories (FY 2019/20)<sup>13</sup>**

### 3.3 PROPOSED RATE REVENUE INCREASES

All of the above information was entered into separate financial planning models (City and District) to produce 10-year financial plans that evaluated the sufficiency of current revenues to meet current and estimated future financial obligations and determined the level of rate revenue increases necessary in each year of the planning period.

Based upon the previously discussed financial data, assumptions, and reserve targets, this Study proposes a 5-year schedule of rate adjustments as detailed in **Table 6** for the District and **Table 7** for the City. As will be described in the sections that follow, rate structure changes are proposed for the new rates to be effective July 1, 2020.

<sup>13</sup> Debt service in FY 2019/20 is atypically low due to deferral of debt by the City

**Table 6: Recommended District Sewer Rate Revenue Increases<sup>14</sup>**

Rate Adjustment Date	Proposed Rate Revenue Increase
July 1, 2020	0.0%
July 1, 2021	1.0%
July 1, 2022	1.0%
July 1, 2023	1.0%
July 1, 2024	1.0%

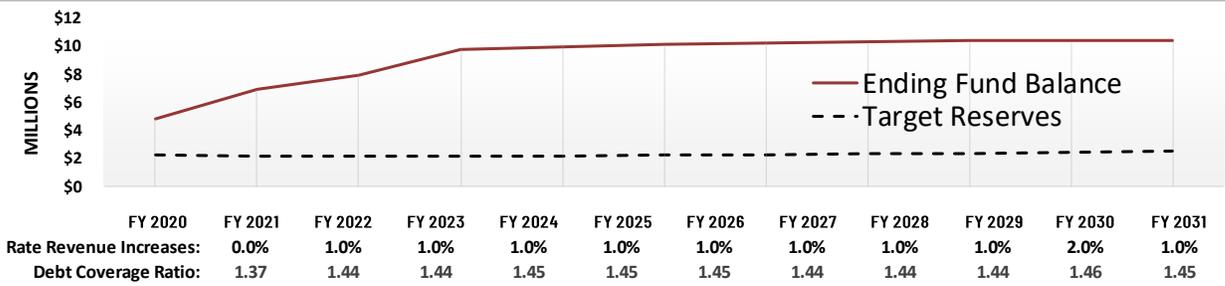
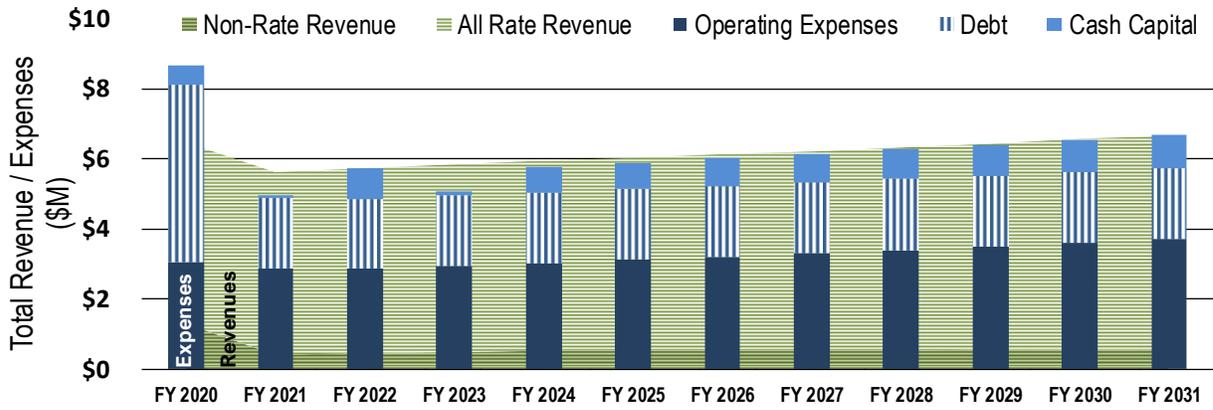
**Table 7: Recommended City Sewer Rate Revenue Increases**

Rate Adjustment Date	Proposed Rate Revenue Increase
July 1, 2020	5.0%
July 1, 2021	2.0%
July 1, 2022	2.0%
July 1, 2023	1.0%
July 1, 2024	1.0%

The cash flow numbers provided in **Schedule 2** for the District are summarized graphically in **Figure 5**. The cash flow numbers provided in **Schedule 3** for the City are summarized graphically in **Figure 6**.

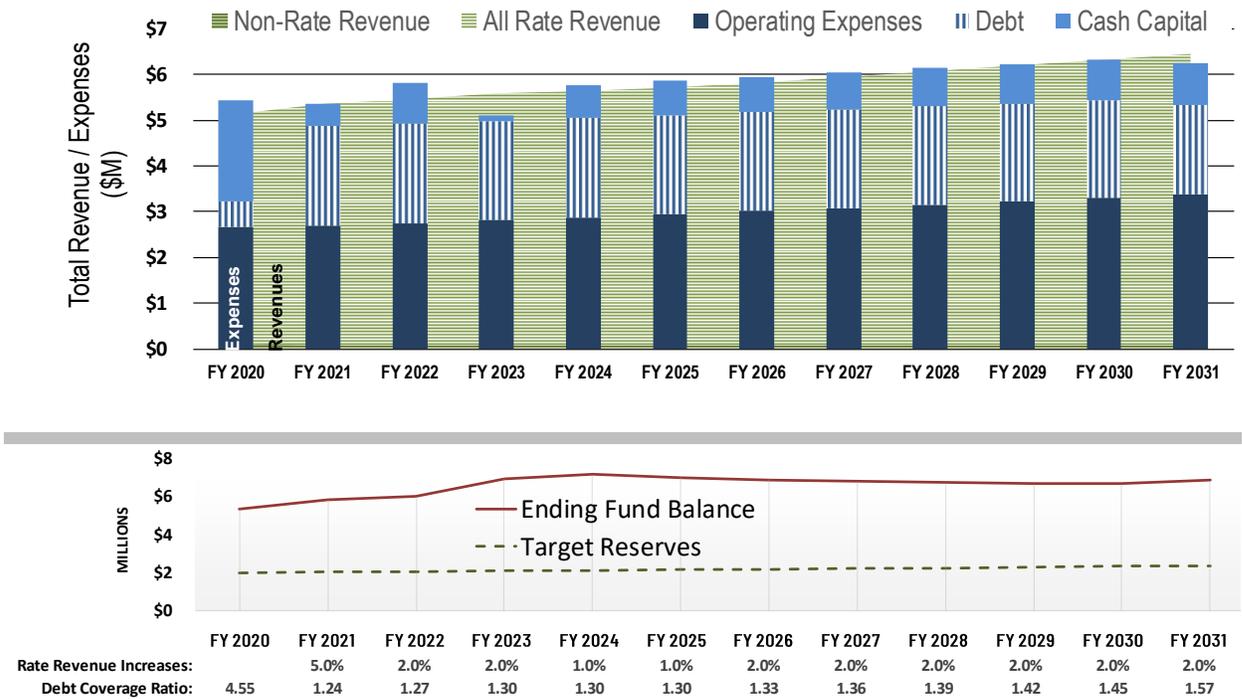
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<sup>14</sup> Recommended rate revenue increases for the District are based on best available information at this time, however District staff acknowledges that there are two future unknowns that may materially change the District’s revenue requirements in the next 5 years: (1) potential shared costs for operating and maintaining the recycled water system and (2) the transfer of ownership of a series of District accounts to the City (“detachment”).



	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031
Rate Revenue Increases:	0.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	2.0%	1.0%
Debt Coverage Ratio:	1.37	1.44	1.44	1.44	1.45	1.45	1.45	1.44	1.44	1.44	1.46	1.45

Figure 5: District Financial Forecast with Recommended Rate Increases



**Figure 6: City Financial Plan Estimates with Recommended Rate Increases**

As can be interpreted from Figure 6 and Figure 5, all proposed rate revenue increases are driven by the need to maintain the debt service coverage ratios at their respective targeted levels. Cash reserve levels for both the City and the District are expected to remain above their targeted levels for the duration of the planning period based on planned capital project spending. While rate revenues can't be decreased to lower the cash reserve levels (because of the debt service coverage ratio targets), both the City and the District should consider increasing the level of capital spending to rehabilitate existing infrastructure (i.e., use the surplus reserves to fund additional projects).

## Section 4. COST OF SERVICE

Once the respective rate revenue requirements for both utilities have been determined, the next step in the rate setting process is to evaluate the cost of providing service to individual customer classes. A cost-of-service analysis evaluates the cost of providing sewer service and proportionately allocates those costs to customer classes and rate structure components to ensure the proposed rate structure is aligned with the costs of providing sewer service. This is done in order to be equitable among all ratepayers and to comply with Proposition 218. This Study employed well-established industry practices as recognized by the WEF, AWWA, and other accepted industry standards. The cost-of-service analysis and rate structure proposed by this Study is designed to:

- ▶ Fairly and equitably recover costs through sewer rates
- ▶ Conform to accepted industry practice and legal requirements
- ▶ Provide financial stability and recovery of system fixed costs

The following section presents a detailed description of the cost-of-service and rate structure methodology and the corresponding results. The same cost allocation and rate design methodology has been applied to both the City and the District for consistency. The rate schedules for each utility are different, however, due to the differing revenue requirements and differences in each customer base.

### 4.1 CUSTOMER STATISTICS

To develop equitable sewer rates, the revenue requirement is allocated to various customer classifications according to the services provided and the demands placed on the sewer system. There are a total of 6,358 accounts between the City and the District (see Table 8). For purposes of allocating costs to various customer classes, this Study calculated metrics to measure the use of the sewer system by various customer classes. As explained in Section 2.1, the ESSUs are assigned to commercial accounts by comparing the winter water use and sewer strength of each commercial account to the

average residential winter water use and strength. In addition, this Study measured Equivalent Sewer Service Flow Units (“ESSFUs”), which is a measure of the average winter water use of residential dwelling units (without the strength factor). ESSFUs are assigned to commercial accounts by comparing the winter water use<sup>15</sup> of each commercial account to the average winter water usage of all residential dwellings. As with ESSUs (see Section 2.1), the average quantity of water used by residential dwelling customers was calculated based on water usage records from the City’s water utility, Millview County Water District, Willow County Water District, and Regina Water Company. As previously mentioned in Section 2.1, the average monthly winter usage across all residential dwelling units in the winter of 2019 was determined to be 5.68 hcf (or 141 gallons per day).

The sewer strength factors for this Study look at biochemical oxygen demand (BOD) and suspended solids (SS) as these factors play a key role in the cost of treatment plant operations and capital expenditures. Consistent with existing practice by the City and the District, this Study uses five strength classifications: residential, low strength commercial, moderate strength commercial, medium strength commercial, and high strength commercial. Residential customers are assigned standard residential strength factors of 175 mg/l for BOD and 175 mg/l for SS. The strength assumptions for low, moderate, medium, and high commercial strength categories are summarized in Table 8. The strength characteristics used by this Study are the same as current practice for both the City and the District and are consistent with guidelines published by the California State Water Resources Control Board<sup>16</sup>.

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<sup>15</sup> As explained in Section 2.1, this Study defines winter water usage as the average monthly water usage from the previous January through March.

<sup>16</sup> California State Resources Control Board Revenue Program Guidelines (March 1998).

Table 8: Account Data and Estimated Sewer Flows and Loadings

Customer Class	No. of Accts.	No. of ESSFUs	No. of ESSSUs	Annual Indoor Water Usage	Estimated Annual Wastewater Flow	BOD Strength	Annual BOD Loading	SS Strength	Annual SS Loading
<b>Ukiah Valley Sewer District</b>									
<i>Residential</i>									
Single-Family Detached	2,200	2,200	2,200	440,000	3.3	0.00	220,000	0.00	220,000
Multi-Family Detached	3	2	2	0	2	0.00	0	0.00	0
Multi-Family Attached	0	2	2	0	3	0.00	3	0.00	3
<i>Commercial</i>									
Commercial Office	2	0	0	0	0	0.00	0	0.00	0
Medium-Density Residential	0	33	2	200,000	2	2.00	300,000	2.00	300,000
Medium-Density Residential	0	2	0	0	0	0.00	0	0.00	0
Commercial Office	2	2	3	300,000	0	0.00	0	0.00	0
<b>District Totals:</b>	<b>2,776</b>	<b>6,302</b>	<b>6,532</b>	<b>440,941</b>	<b>329.82</b>		<b>552,482</b>		<b>535,036</b>
<b>City of Ukiah</b>									
<i>Residential</i>									
Single-Family Detached	2,200	2,200	2,200	440,000	3.3	0.00	220,000	0.00	220,000
Multi-Family Detached	2	0	0	0	2	0.00	0	0.00	0
Multi-Family Attached	0	2	2	0	3	0.00	3	0.00	3
<i>Commercial</i>									
Commercial Office	0	0	0	0	0	0.00	0	0.00	0
Medium-Density Residential	0	0	0	0	2	2.00	0	2.00	0
Medium-Density Residential	0	0	0	0	2	0.00	0	0.00	0
Commercial Office	3	2	2	0	0	0.00	0	0.00	0
<b>City Totals:</b>	<b>3,582</b>	<b>6,263</b>	<b>6,490</b>	<b>409,585</b>	<b>306.37</b>		<b>512,985</b>		<b>494,520</b>

Footnotes:

- 1. Single-Family Detached: 2,200 accts, 2,200 ESSFUs, 2,200 ESSSUs, 440,000 gal water usage, 3.3 gpd flow, 0.00 BOD strength, 220,000 lbs BOD loading, 0.00 SS strength, 220,000 lbs SS loading.
- 2. Multi-Family Detached: 3 accts, 2 ESSFUs, 2 ESSSUs, 0 gal water usage, 2 gpd flow, 0.00 BOD strength, 0 lbs BOD loading, 0.00 SS strength, 0 lbs SS loading.
- 3. Multi-Family Attached: 0 accts, 2 ESSFUs, 2 ESSSUs, 0 gal water usage, 3 gpd flow, 0.00 BOD strength, 3 lbs BOD loading, 0.00 SS strength, 3 lbs SS loading.

### 4.2 FIXED VS. VARIABLE COST COMPONENTS

Before costs are allocated to individual customer classes (as defined in 4.1), each utility cost is designated to be recovered either through fixed revenue or variable (i.e., usage-based) revenue. This step uses budget data from a “Test Year” (in this case FY 2020/21) and assigns each budgetary line item to either fixed revenue, variable revenue, or a combination of the two. These expense assignments are summarized in Table 9 (District) and Table 10 (City) in Rows 1 through 12. Some costs are designated to be

collected entirely through fixed revenue, such as administrative costs, legal costs, billing costs, and debt service, because these costs do not change regardless of operational activities. Other costs are designated to be collected entirely through variable revenue, such as utilities, chemical and operational supplies, because those costs can be correlated to wastewater flows. All other costs are allocated based on the “indirect allocation method” (based on the proportionate allocation of all costs that were previously allocated either to fixed or variable). In this case, the indirect allocation results in 62.0% allocation to fixed revenue and 38.0% to variable revenue for the District and 57.0% allocation to fixed revenue and 43.0% to variable revenue for the City.

Rows 13 and 14 are credits of not-rate revenue sources to offset revenue requirements. Connection fees are credits to the variable and fixed categories based on the indirect method, while Miscellaneous Non-Rate Revenue is credited entirely to offset expenses allocated to the fixed category. As a final step in Row 15, the indirect allocation basis is used to allocate the cost of building cash reserves during the Test Year.

The tables conclude with the revenue requirements from fixed and variable revenue components.

**Table 9: District Designation of Fixed vs. Variable Revenue (Test Year)**

	Test Year Budget	Revenue Recovery			
		Fixed %	Variable %	Fixed \$	Variable \$
1 Salaries and Benefits	\$1,175,987	62.0%	38.0%	\$729,674	\$446,313
2 Professional Services	\$458,806	62.0%	38.0%	\$284,679	\$174,127
3 Operating Supplies	\$148,978		100%		\$148,978
4 Utilities and Chemicals	\$326,903		100%		\$326,903
5 Administrative	\$242,217	100%		\$242,217	
6 Training	\$26,221	100%		\$26,221	
7 Billing	\$78,977	100%		\$78,977	
8 Legal Fees	\$156,734	100%		\$156,734	
9 Internal Allocation	\$212,252	100%		\$212,252	
10 Miscellaneous	\$61,614	100%		\$61,614	
11 Capital	\$92,802	62.0%	38.0%	\$57,581	\$35,220
12 Debt Service	\$1,988,550	100%		\$1,988,550	
13 Use of Connection Fees	-\$513,869	100%		-\$513,869	
14 Misc. Non-Rate Revenue	-\$334,844	100%		-\$334,844	
15 Change in Fund Balance	\$1,069,861	62.0%	38.0%	\$663,826	\$406,036
16	<b>\$5,191,188</b>	<b>Revenue Requirement:</b>		<b>\$3,653,612</b>	<b>\$1,537,576</b>
17				<b>70.4%</b>	<b>29.6%</b>
18		<b>Total Revenue Requirement:</b>		<b>\$5,191,188</b>	

<sup>1</sup> The Settlement Agreement revenue, being atypical for the District, has been excluded from this table due to its distortion effect on the rate structure.

Table 10: City Designation of Fixed vs. Variable Revenue (Test Year)

	Test Year Budget	Revenue Recovery			
		Fixed %	Variable %	Fixed \$	Variable \$
1 Salaries and Benefits	\$1,158,784	57.0%	43.0%	\$660,244	\$498,539
2 Professional Services	\$438,224	57.0%	43.0%	\$249,688	\$188,535
3 Operating Supplies	\$148,009		100%		\$148,009
4 Utilities and Chemicals	\$324,778		100%		\$324,778
5 Administrative	\$186,762	100%		\$186,762	
6 Training	\$25,794	100%		\$25,794	
7 Billing	\$99,623	100%		\$99,623	
8 Legal Fees	\$41,875	100%		\$41,875	
9 Internal Allocation	\$210,872	100%		\$210,872	
10 Miscellaneous	\$61,214	100%		\$61,214	
11 Capital	\$492,198	57.0%	43.0%	\$280,442	\$211,757
12 Debt Service	\$2,176,862	100%		\$2,176,862	
13 Use of Connection Fees	-\$516,498	100%		-\$516,498	
14 Misc. Non-Rate Revenue	-\$42,414	100%		-\$42,414	
15 Change in Fund Balance	\$482,249	57.0%	43.0%	\$274,773	\$207,476
16	<b>\$5,288,332</b>	<b>Revenue Requirement:</b>		<b>\$3,709,237</b>	<b>\$1,579,095</b>
17				<b>70.1%</b>	<b>29.9%</b>
18		<b>Total Revenue Requirement:</b>		<b>\$5,288,332</b>	

### 4.3 DETERMINATION OF UNIT COSTS

After allocating revenue requirements to be recovered through fixed vs. variable revenue, Table 11 shows how both the variable and fixed rate components are converted to unit costs. First the variable sewer rate revenue requirement is allocated evenly between the metrics of flow, biochemical oxygen demand (BOD), and suspended solids (SS). BOD and SS are measures of sewerage strength, which drives many of the variable cost of operation including chemicals, power, and labor. Based on existing practices at the City and District, common practice in the sewer utility rate setting community, and best practices promulgated by associations such as WEF, it is reasonable to allocate variable operating costs evenly between flow, BOD and SS.

Unit costs are then calculated by dividing the total cost for each component by the number of units identified in Table 8. For example, the District has approximately 552

thousand pounds of SS and an annual cost of \$507 thousand for solid removal, treatment and disposal, therefore the unit cost for SS is \$0.92 / lb. These unit costs become the basis for then assigning costs to customer classes.

Table 11: Determination of Unit Costs (District and City)

Cost Category	Component Allocation Percentages	Parameter Allocation Percentages	Annual Cost Allocated to Each Parameter	Quantities for Each Parameter	Unit Cost for Each Parameter
<b>District</b>					
<b>Fixed %</b>			\$3,332	32	\$104.13
<b>Variable %</b>	2		\$3,886		
M		3	\$22,000	32	\$687.50
D		33	\$12,660	2	\$6,330.00
SS		33	\$12,660	3	\$4,220.00
			<b>Revenue Requirement: \$5,191,188</b>		
<b>City</b>					
<b>Fixed Operating Costs</b>			\$3,230	23	\$140.43
<b>Variable Operating Costs</b>	2		\$3,653		
M		3	\$3,000	3	\$1,000.00
D		33	\$2,000	2	\$1,000.00
SS		33	\$2,000	2	\$1,000.00
			<b>Revenue Requirement: \$5,288,332</b>		

Footnotes:

1. All costs are in thousands of dollars unless otherwise noted.  
 2. All quantities are in thousands of units unless otherwise noted.

### 4.4 ALLOCATION OF COSTS TO USERS (BY CUSTOMER CLASSES)

Unit costs are applied to the ESSFUs, annual sewer flows, BOD loadings and SS loadings associated with each customer class to arrive at the allocation of total costs to each customer class. Table 12 presents the allocation of costs to each user class.

Table 12: Allocation of Costs to Users (District and City)

No. of ESSFUs	Water Usage	BOD Strength	SS Strength	Customer Class	Service Charge Costs			Allocation of Total Costs	
					Fixed Costs	Variable Costs	Flow BOD SS		
<b>District</b>									
				<b>Residential</b>	\$579.78 / ESSFU	\$1.19 / hcf	\$0.92 / lb	\$0.95 / lb	
22				Residential	32	2	2	3	2
2				Med	3	2	2	3	
2				Med	3	2	2	3	
<b>Commercial</b>									
				Med		3	3	2	3
33	2	2	2	Med	2	33	32	33	3
2				Med	3	3	23	3	2
2	3	3		Med				3	2
<b>6,302</b>	<b>440,941</b>			<b>Totals:</b>	<b>\$3,653,612</b>	<b>\$522,776</b>	<b>\$507,400</b>	<b>\$507,400</b>	<b>\$5,191,188</b>
<b>City</b>									
				<b>Residential</b>	\$592.25 / ESSFU	\$1.31 / hcf	\$1.02 / lb	\$1.05 / lb	
22	3			Residential	3	2	2	32	2
2	3			Med	23		2	2	2
2				Med		22	3	2	
<b>Commercial</b>									
	3			Med		3	223	2	2
	22	2	2	Med	3	33	2	3	2
	3			Med	3			3	3
2				Med	2	3		3	2
<b>6,263</b>	<b>409,585</b>			<b>Totals:</b>	<b>\$3,709,237</b>	<b>\$536,892</b>	<b>\$521,101</b>	<b>\$521,101</b>	<b>\$5,288,332</b>

Footnotes:

Table 12: Allocation of Costs to Users (District and City)

### 4.5 CALCULATION OF STRENGTH MULTIPLIERS

As introduced in Section 2.1, ESSFUs are calculated based on flow and strength characteristics. “Strength factors” are used to quantify the difference between a moderate, medium, or high strength commercial customer as compared to typical residential customers. The strength factor is made up of two elements: the fixed cost component and the variable cost component. The fixed component is based only on flow (not strength) therefore all customer types receive the same value of 70.4 for the District and 70.1% for the City (see Table 12). The remaining variable costs are scaled for each customer class in order to reflect their relative strength of the discharge. This scaling is calculated by dividing the sum of the classes’ BOD and SS strength by the sum

of residential BOD and SS strength. For this calculation we use the average value from both the City and the District (the average percent of variable costs between the City and the District is 29.7%). By way of example, the full ESSSU calculation for High Strength Commercial is shown in **Figure 7**.

$$High\ Strength\ Multiplier = 70.3\% + \left[ \frac{\left( 800 \frac{mg}{l} + 600 \frac{mg}{l} \right)}{\left( 175 \frac{mg}{l} + 175 \frac{mg}{l} \right)} \right] \times 29.7\% = 1.892$$

Figure 7 – Example Calculation – High Strength Multiplier

Again, ESSSU assignments for commercial accounts are calculated by comparing the account’s winter water usage to the average water usage for residential dwellings (5.68 hcf per month) and then multiplied by the numerical strength factor assigned to the commercial classification. As such, a commercial high strength commercial account with month winter water usage of 11.36 hcf would be assigned 3.78 ESSSUs (11.36 hcf divided by 5.68 hcf x 1.892).

The strength multipliers for the four commercial classes are summarized in Table 13.

Table 13: Commercial Strength Factors

Classification	Strength Factor
High Strength Commercial	1.892
Medium Strength Commercial	1.000
Low Strength Commercial	1.000
Very Low Strength Commercial	1.000

## Section 5. RATE DESIGN & SCHEDULES

The following describes recommended minor modifications the rate structures currently used by the City and the District and concludes with the proposed sewer rates schedules for both the City and the District for the next 5 years.

### 5.1 EXISTING RATE STRUCTURES

The City and District currently charge for sewer services with very similar rate structures. All customers pay a fixed “minimum charge” in addition to a consumption charge (based on winter water usage).

City Residential: All residential accounts with up to 4 dwelling units pay the minimum charge multiplied by the number of dwelling units. In addition, those accounts pay a (lower) consumption rate based on winter water usage (i.e. the water usage from the previous January). Mobile home and apartments with more than 4 dwelling units do not pay the minimum charge, however their consumption rate is equal to the (higher) Commercial 1 rate.

District Residential: All residential accounts pay the minimum charge multiplied by the number of dwelling units. In addition, a consumption rate is charged based on all winter water usage in excess of 3.4 hundred cubic feet (hcf)<sup>17</sup>. The District defines winter water usage as the average water usage from the previous January through March.

City and District Commercial: Commercial properties (i.e. non-residential accounts) are charged the same minimum charge as residential accounts \*or\* a consumption charge based on winter water usage and the applicable consumption rate, whichever is

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<sup>17</sup> 1 hcf is 748 gallons, therefore 3.4 hcf is 2,543 gallons per month (or 85 gallons per day)

greater. There are four commercial classifications, with the higher strength classifications paying a higher consumption rate.

## 5.2 RATE STRUCTURE RECOMMENDATIONS

As described above, the City and District currently have very similar rate structures with only a few minor differences. With the concurrence of both District and City staff, this Study recommends that the rate structures be modified to be identical (although the rates themselves will be different to reflect the different financial needs and objectives of each respective agency). The changes are not expected to be material for either party and having identical rate structures will help the parties coordinate business and rate decisions in the future.

All customers pay a fixed monthly Service Charge and a Consumption Rate. Residential customers will pay a Service Charge for each dwelling unit while Commercial customers will pay a Service Charge for each ESSFU<sup>18</sup> (with a minimum of one (1) ESSFU per commercial account). The Consumption Rate for all customers is determined by multiplying the account's winter water usage by the respective Consumption Rate for the customer classification (which accounts for sewer strength).

The recommendation to change commercial accounts from the current flow-based structure to a structure with both a fixed component and variable component is to reflect the fact that fixed costs are primarily driven by system capacity (size) which is best measured by flow (i.e. ESSFUs) while variable costs are primarily driven by treatment costs (such as chemicals and energy) which are driven by both flow and strength (i.e. ESSSUs).

To be clear, the City's mobile home and apartments will no longer be charged as commercial customers and District residential customers will no longer receive a water

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<sup>18</sup> ESSFU are calculated based on water usage from the previous winter.

use allowance. Winter water usage will follow the District’s convention of using the average of usage values from January, February and March each year.

Table 14 presents the proposed monthly Service Charges and Consumption Rates recommended for each customer class for both the City and the District for FY 2020/21.

Table 14: Sewer Rate Determination (District and City for FY 2020/21)

Customer Class	ESSFUs	Annual Indoor Water Use	BOD Strength	SS Strength	Monthly Fixed Charges	Usage Rates	Total Fixed Charge Revenue	Total Usage Charge Revenue	Total Annual Rate Revenue
<b>District</b>									
<i>Residential</i>									
Single-Family Detached	2,120	11,000	100	100	\$48.31	\$3.22	\$32,200	\$3,000	\$2,100
Multi-Family (2-4 units)	200	10,000	100	100	\$48.31	\$3.22	\$3,000	\$2,200	\$1,000
Multi-Family (5+ units)	200	10,000	100	100	\$48.31	\$3.22	\$3,000	\$2,000	\$1,000
<i>Commercial</i>									
Small Commercial	1,000	10,000	100	100	\$48.31	\$3.22	\$3,000	\$2,000	\$1,000
Medium Commercial	300	20,000	200	200	\$48.31	\$3.51	\$2,300	\$3,000	\$3,000
Large Commercial	200	30,000	300	300	\$48.31	\$7.01	\$3,000	\$2,000	\$2,200
Industrial	200	30,000	300	300	\$48.31	\$9.32	\$3,000	\$3,000	\$2,200
<b>Totals:</b>	<b>6,302</b>	<b>440,941</b>					<b>\$3,653,612</b>	<b>\$1,537,576</b>	<b>\$5,191,188</b>
<b>City</b>									
<i>Residential</i>									
Single-Family Detached	2,200	11,000	100	100	\$49.35	\$3.57	\$3,200	\$3,000	\$2,200
Multi-Family (2-4 units)	200	10,000	100	100	\$49.35	\$3.57	\$3,000	\$2,000	\$2,000
Multi-Family (5+ units)	200	10,000	100	100	\$49.35	\$3.57	\$3,000	\$2,000	\$2,000
<i>Commercial</i>									
Small Commercial	1,000	10,000	100	100	\$49.35	\$3.57	\$3,000	\$3,000	\$2,200
Medium Commercial	300	20,000	200	200	\$49.35	\$3.89	\$3,000	\$2,000	\$2,200
Large Commercial	200	30,000	300	300	\$49.35	\$7.77	\$3,000	\$2,000	\$3,000
Industrial	200	30,000	300	300	\$49.35	\$10.32	\$2,000	\$2,000	\$2,000
<b>Totals:</b>	<b>6,263</b>	<b>409,585</b>					<b>\$3,709,237</b>	<b>\$1,579,095</b>	<b>\$5,288,332</b>

Footnotes:

1. All rates are in dollars per month per unit. 2. All rates are in dollars per month per unit. 3. All rates are in dollars per month per unit. 4. All rates are in dollars per month per unit. 5. All rates are in dollars per month per unit. 6. All rates are in dollars per month per unit. 7. All rates are in dollars per month per unit. 8. All rates are in dollars per month per unit. 9. All rates are in dollars per month per unit. 10. All rates are in dollars per month per unit.

### 5.3 PROPOSED RATE SCHEDULES

The above rates are proposed to be implemented on July 1, 2020. Subsequently sewer rates would increase by the rate adjustments proposed in Table 6 (for the District) and

Table 7 (for the City). The proposed rate schedules for the next 5 years are summarized in Table 15 (District) and Table 16 (City).

**Table 15: District 5-Year Sewer Rate Schedule**

	<b>July 1, 2020</b>	<b>July 1, 2021</b>	<b>July 1, 2022</b>	<b>July 1, 2023</b>	<b>July 1, 2024</b>
<b>Monthly Service Charge*:</b>	\$48.31	\$48.79	\$49.28	\$49.77	\$50.27
<b>Consumption Rate (per HCF):</b>					
Residential:	\$3.22	\$3.26	\$3.29	\$3.32	\$3.35
Commercial 1:	\$3.22	\$3.26	\$3.29	\$3.32	\$3.35
Commercial 2:	\$3.51	\$3.55	\$3.59	\$3.63	\$3.67
Commercial 3:	\$7.01	\$7.08	\$7.15	\$7.22	\$7.29
Commercial 4:	\$9.32	\$9.41	\$9.50	\$9.60	\$9.70

\* Service Charge is per dwelling unit for residential and per ESSFU for commercial accounts (with a minimum charge of 1 ESSFU).

**Table 16: City 5-Year Sewer Rate Schedule**

	<b>July 1, 2020</b>	<b>July 1, 2021</b>	<b>July 1, 2022</b>	<b>July 1, 2023</b>	<b>July 1, 2024</b>
<b>Monthly Service Charge*:</b>	\$49.35	\$50.34	\$51.35	\$51.86	\$52.38
<b>Consumption Rate (per HCF):</b>					
Residential:	\$3.57	\$3.64	\$3.71	\$3.75	\$3.79
Commercial 1:	\$3.57	\$3.64	\$3.71	\$3.75	\$3.79
Commercial 2:	\$3.89	\$3.97	\$4.05	\$4.09	\$4.13
Commercial 3:	\$7.77	\$7.92	\$8.08	\$8.16	\$8.24
Commercial 4:	\$10.32	\$10.53	\$10.74	\$10.85	\$10.96

\* Service Charge is per dwelling unit for residential and per ESSFU for commercial accounts (with a minimum charge of 1 ESSFU).

## **Section 6. CONCLUSION**

This Study used methodologies that are aligned with industry standard practices for rate setting as promulgated by WEF, AWWA and all applicable laws, including California's Proposition 218. The proposed annual adjustments to the rates proportionately assign costs to each customer class and customer based on service demands and will allow the City and District to continue to provide reliable and affordable sewer service to customers.

The sewer rates will need to be adopted in accordance with Proposition 218, which will require a detailed notice describing the proposed rates to be mailed to each affected property owner or customer at least 45 days prior to conducting a public hearing to adopt the rates.

## **SCHEDULES**

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Schedule 1 – Detailed Allocation of Operational Expenses between District and City

Schedule 2 – District Cash Flow Pro Forma

Schedule 3 – City Cash Flow Pro Forma

		Amount eligible to be split	Percent Split		Dollar Split		Notes
			District	City	District	City	
<b>FY 2019/20</b>							
<b>District Operating Expense Budget Budget</b>							
<b>EXPENSES</b>							
1	<b>Wages &amp; Payroll (Personnel)</b>						
2	District Manager	\$49,500	90%	50.2%	49.8%	\$27,298	\$22,202
3	Administrative Assistant/Sec.	\$50,000	95%	50.2%	49.8%	\$26,327	\$23,673
4	Office Assistant	\$31,200	95%	50.2%	49.8%	\$16,428	\$14,772
5	Employer Contribution (SS, UE, WC)	\$8,500	95%	50.2%	49.8%	\$4,476	\$4,024
6	<b>Office Expense</b>						
7	Telephone & DSL	\$1,100	95%	50.2%	49.8%	\$579	\$521
8	Dues & Subscriptions	\$10,622	95%	50.2%	49.8%	\$5,593	\$5,029
9	Office Rent	\$5,100	95%	50.2%	49.8%	\$2,685	\$2,415
10	Office Utilities	\$1,500	95%	50.2%	49.8%	\$790	\$710
11	Postage	\$500	95%	50.2%	49.8%	\$263	\$237
12	Supplies	\$2,000	95%	50.2%	49.8%	\$1,053	\$947
13	Office Equipment	\$1,500	95%	50.2%	49.8%	\$790	\$710
14	Software/ Web	\$4,500	95%	50.2%	49.8%	\$2,369	\$2,131
15	<b>Auditing &amp; Fiscal Services</b>						
16	Audit Services-FS Preparation	\$22,000	100%	50.2%	49.8%	\$11,036	\$10,964
17	Accounting/bookkeeping Services	\$1,500	100%	50.2%	49.8%	\$752	\$748
18	Banking Services	\$360	100%	50.2%	49.8%	\$181	\$179
19	State Controllers Report	\$1,500	100%	50.2%	49.8%	\$752	\$748
20	Liability and Property Insurance	\$8,200	100%	50.2%	49.8%	\$4,113	\$4,087
21	Financial Review/Monthly Reports	\$55,000	100%	50.2%	49.8%	\$27,590	\$27,410
22	<b>Other Prof &amp; Special Services</b>						
23	Engineer Services	\$20,000	100%	50.2%	49.8%	\$10,033	\$9,967
24	Mapping Services (GIS)	\$1,000	0%	50.2%	49.8%	\$1,000	\$0
25	Computer Services/Hardware	\$2,500	100%	50.2%	49.8%	\$1,254	\$1,246
26	County Auditor (property tax admin)	\$2,500	0%	50.2%	49.8%	\$2,500	\$0
27	Financial Consulting Contract	\$15,000	72%	50.2%	49.8%	\$9,618	\$5,382
28	Publication & Legal Notices	\$105	100%	50.2%	49.8%	\$53	\$52
29	<b>Legal Fees</b>						
30	Bond Refinancing	\$60,000	0%	100%	0%	\$60,000	\$0
31	Dispute Resolution & Arbitration	\$200,000	0%	100%	0%	\$200,000	\$0
32	District Legal Support	\$60,000	50%	50.2%	49.8%	\$45,049	\$14,951
33	<b>Training/Transportation/Travel</b>						
34	Travel to Seminars (Board)	\$4,000	100%	50.2%	49.8%	\$2,007	\$1,993
35	Travel for District Manager	\$2,500	90%	50.2%	49.8%	\$1,379	\$1,121
36	Staff Training and Development	\$3,000	100%	50.2%	49.8%	\$1,505	\$1,495
37	Seminars/Conferences	\$3,500	100%	50.2%	49.8%	\$1,756	\$1,744
<b>District Revenue Budget FY 2018/19 Actuals</b>							
<b>REVENUE</b>							
38	PROPERTY TAX CURRENT SECURED	-\$54,400	0%	100%	0%	-\$54,400	\$0
39	PROPERTY TAX CURRENT UNSEC	-\$1,634	0%	100%	0%	-\$1,634	\$0
40	SUPPLEMENTAL ROLL TAX	-\$1,170	0%	100%	0%	-\$1,170	\$0
41	PROPERTY TAX PRIOR UNSECUR	-\$93	0%	100%	0%	-\$93	\$0
42	HOMEOWNERS PROP TAX RELIEF	-\$437	0%	100%	0%	-\$437	\$0
43	INTEREST	-\$65,170	0%	100%	0%	-\$65,170	\$0
44	SPECIAL TAX - FIRE ASSMT	-\$76,792	0%	100%	0%	-\$76,792	\$0
45	Other Income	-\$2,485	0%	100%	0%	-\$2,485	\$0
46	OTHER	-\$21,697	0%	100%	0%	-\$21,697	\$0
<b>Fund 840 (City Operating Fund) FY 2019/20 Budget</b>							
<b>REVENUE</b>							
47	42421 WASTE DISCHARGE PERMIT	-\$429	0%	0%	100%	\$0	-\$429
48	42422 GREASE TRAP PERMIT FEES CITY	-\$306	0%	0%	100%	\$0	-\$306
49	44170 PLAN CHECK FEES	-\$8,183	0%	0%	100%	\$0	-\$8,183
50	44621 SEWER 1 RESIDENCE (CITY)	-\$2,117,905	0%	0%	100%	\$0	-\$2,117,905
51	44622 SEWER 2 RESIDENCE (CITY)	-\$194,112	0%	0%	100%	\$0	-\$194,112
52	44623 SEWER 3 RESIDENCE (CITY)	-\$42,154	0%	0%	100%	\$0	-\$42,154
53	44624 SEWER 4 RESIDENCE (CITY)	-\$120,933	0%	0%	100%	\$0	-\$120,933
54	44625 SEWER RESIDENTIAL/UNIT (CITY)	-\$528,122	0%	0%	100%	\$0	-\$528,122
55	44626 SEWER COMMERCIAL (CITY)	-\$274,369	0%	0%	100%	\$0	-\$274,369
56	44627 SEWER COMM LOW PER UNIT CITY	-\$670,130	0%	0%	100%	\$0	-\$670,130
57	44628 SEWER COMM MODERATE/UNIT CIT	-\$88,668	0%	0%	100%	\$0	-\$88,668
58	44629 SEWER COMM MEDIUM/UNIT CITY	-\$61,435	0%	0%	100%	\$0	-\$61,435
59	44630 SEWER COMM HIGH/UNIT CITY	-\$285,593	0%	0%	100%	\$0	-\$285,593
60	44631 SEWER APARTMENTS CITY	-\$471,059	0%	0%	100%	\$0	-\$471,059
61	44632 SEW LAT INSPECTION FEE-CITY	-\$2,652	0%	0%	100%	\$0	-\$2,652
62	44633 SEWER MOBILE HOMES CITY	-\$178,095	0%	0%	100%	\$0	-\$178,095
63	44640 CONNECTION FEES	-\$500	0%	0%	100%	\$0	-\$500
64	44732 SEW LAT INSPECTION FEE-UVSD	-\$357	0%	0%	100%	\$0	-\$357
65	44830 REIMBURSABLE JOBS	\$0	0%	0%	100%	\$0	-\$1,075
66	46110 INTEREST ON INVESTMENTS	-\$6,884	0%	0%	100%	\$0	-\$6,884
67	44820 SALES OF PROPERTY	-\$3,621	0%	0%	100%	\$0	-\$3,621

EXPENSES							
68	54103 LAB SUPPLIES	\$20,000	100%	50.2%	49.8%	\$10,033	\$9,967
69	56125 LAB EQUIP-REPAIR & MAINT.	\$10,000	100%	50.2%	49.8%	\$5,016	\$4,984
70	51110 REGULAR SALARIES & WAGES	\$1,266,534	100%	50.2%	49.8%	\$635,331	\$631,203
71	51120 NON-REGULAR SALARIES & WAGES	\$7,000	100%	50.2%	49.8%	\$3,511	\$3,489
72	51210 RETIREMENT (PERS)	\$156,008	100%	50.2%	49.8%	\$78,258	\$77,750
73	51220 INSURANCE	\$255,474	100%	50.2%	49.8%	\$128,153	\$127,321
74	51230 WORKERS COMP	\$93,228	100%	50.2%	49.8%	\$46,766	\$46,462
75	51240 MEDICARE	\$20,742	100%	50.2%	49.8%	\$10,405	\$10,337
76	51130 OVERTIME SALARIES & WAGES	\$53,000	100%	50.2%	49.8%	\$26,586	\$26,414
77	51250 UNEMPLOYMENT	\$14,365	100%	50.2%	49.8%	\$7,206	\$7,159
78	51290 CELL PHONE STIPEND	\$4,737	100%	50.2%	49.8%	\$2,376	\$2,361
79	51140 STAND-BY SALARIES & WAGES	\$35,000	100%	50.2%	49.8%	\$17,557	\$17,443
80	51211 PERS UNFUNDED LIABILITY	\$248,440	100%	50.2%	49.8%	\$124,625	\$123,815
81	61300 BILLING & COLLECTION ALLOCATIO	\$171,680	100%	43.7%	56.3%	\$74,959	\$96,721
82	61600 GARAGE ALLOCATION	\$72,904	100%	50.2%	49.8%	\$36,571	\$36,333
83	61420 BUILDING MAINTENANCE ALLOCATIO	\$5,232	100%	50.2%	49.8%	\$2,625	\$2,607
84	61422 IT ALLOCATION	\$95,841	100%	50.2%	49.8%	\$48,077	\$47,764
85	61500 INSURANCE ALLOCATION	\$157,031	100%	50.2%	49.8%	\$78,771	\$78,260
86	61200 PURCHASING ALLOCATION	\$46,426	100%	50.2%	49.8%	\$23,289	\$23,137
87	61430 CORP YARD ALLOCATION	\$16,763	100%	50.2%	49.8%	\$8,409	\$8,354
88	61700 DISPATCH	\$16,603	100%	50.2%	49.8%	\$8,329	\$8,274
89	62100 ADMIN & OVERHEAD ALLOCATION	\$249,789	100%	50.2%	49.8%	\$125,302	\$124,487
90	54100 SUPPLIES	\$142,000	100%	50.2%	49.8%	\$71,231	\$70,769
91	54101 POSTAGE	\$700	100%	50.2%	49.8%	\$351	\$349
92	55100 TELEPHONE	\$4,800	100%	50.2%	49.8%	\$2,408	\$2,392
93	55210 UTILITIES	\$312,200	100%	50.2%	49.8%	\$156,609	\$155,591
94	56300 BUILDING MAINT. & REPAIR	\$18,000	100%	50.2%	49.8%	\$9,029	\$8,971
95	57100 LEARNING AND DEVELOPMENT	\$37,500	100%	50.2%	49.8%	\$18,811	\$18,689
96	52100 CONTRACTUAL SERVICES	\$405,298	100%	50.2%	49.8%	\$203,309	\$201,988
97	52150 LEGAL SERVICES/EXPENSES	\$20,000	100%	50.2%	49.8%	\$10,033	\$9,967
98	56120 EQUIPMENT MAINTENANCE & REPAIR	\$287,000	100%	50.2%	49.8%	\$143,968	\$143,032
99	57300 MEMBERSHIPS & SUBSCRIPTIONS	\$7,800	100%	50.2%	49.8%	\$3,913	\$3,887
100	54320 SOFTWARE	\$42,000	100%	50.2%	49.8%	\$21,068	\$20,932
101	52113 PLANNING STUDIES	\$125,000	100%	50.2%	49.8%	\$62,704	\$62,296
102	52180 SECURITY SERVICES	\$1,500	100%	50.2%	49.8%	\$752	\$748
103	54330 COMPUTER AND TECHNOLOGY	\$27,000	100%	50.2%	49.8%	\$13,544	\$13,456
104	56210 FUEL & FLUIDS	\$47,500	100%	50.2%	49.8%	\$23,827	\$23,673
105	59100 PROPERTY TAXES PAID	\$10,750	100%	50.2%	49.8%	\$5,393	\$5,357
106	59101 FEES	\$33,300	100%	50.2%	49.8%	\$16,704	\$16,596
107	59400 OTHER EXPENSES	\$10,000	100%	50.2%	49.8%	\$5,016	\$4,984
108	54102 SMALL TOOLS	\$27,000	100%	50.2%	49.8%	\$13,544	\$13,456
109	56130 EXTERNAL SERVICES	\$40,000	100%	50.2%	49.8%	\$20,065	\$19,935
110	56410 EQUIPMENT RENTAL - PRIVATE	\$2,000	100%	50.2%	49.8%	\$1,003	\$997
111	58510 REIMBURSABLE JOBS	\$5,000	100%	50.2%	49.8%	\$2,508	\$2,492
112	52114 COMPLIANCE STUDIES	\$25,000	100%	50.2%	49.8%	\$12,541	\$12,459
113	54700 FINES & PENALTIES	\$50,000	100%	50.2%	49.8%	\$25,082	\$24,919
114	55200 PG&E	\$33,000	100%	50.2%	49.8%	\$16,554	\$16,446
115	56504 FACILITY MAINTENANCE & REPAIR	\$20,000	100%	50.2%	49.8%	\$10,033	\$9,967
116	58201 WATER PURCHASES	\$1,000	100%	50.2%	49.8%	\$502	\$498
117	58202 TREATMENT PLANT CHEMICALS	\$240,000	100%	50.2%	49.8%	\$120,391	\$119,609
<b>Fund 841 (City Debt Fund)</b>		<b>FY 2019/20 Budget</b>					
REVENUE							
118	46110 INTEREST ON INVESTMENTS	-\$21,297	100%	52.0%	48.0%	-\$11,074	-\$10,223
EXPENSES							
119	52500 TRUSTEE FEES	\$8,000	100%	50.2%	49.8%	\$4,013	\$3,987
<b>Fund 842 (City Rate Stabilization)</b>		<b>FY 2019/20 Budget</b>					
REVENUE							
120	46110 INTEREST ON INVESTMENTS	-\$7,720	100%	0%	100%	\$0	-\$7,720
<b>Fund 843 (City Connection Fee)</b>		<b>FY 2019/20 Budget</b>					
REVENUE							
121	46110 INTEREST ON INVESTMENTS	-\$5,894	100%	0%	100%	\$0	-\$5,894
122	44770 SALE OF RECYCLED WATER	\$0	100%	0%	100%	\$0	\$700
<b>Fund 844 (City Capital Fund)</b>		<b>FY 2019/20 Budget</b>					
REVENUE							
123	46110 INTEREST ON INVESTMENTS	-\$10	100%	0%	100%	\$0	-\$10
EXPENSES							
124	53000 LAWSUIT SETTLEMENT	\$1,000,000	100%	0%	100%	\$0	\$1,000,000
125	52150 LEGAL SERVICES - CITY ONLY	\$0	100%	0%	100%	\$0	\$15,737

Shared based on # of accounts

Projected annual expense = \$25K

<b>Fund 940 (District Operating Fund)</b>		<b>FY 2018/19 Actuals</b>					
<b>REVENUE</b>							
126	42421 WASTE DISCHARGE PERMIT	\$0	0%	100%	0%	\$0	\$0
127	42423 GREASE TRAP PERMIT FEES (UVSD)	-\$100	0%	100%	0%	-\$100	\$0
128	44721 SEWER 1 RESIDENCE (UVSD)	-\$1,456,628	0%	100%	0%	-\$1,456,628	\$0
129	44722 SEWER 2 RESIDENCE (UVSD)	-\$79,946	0%	100%	0%	-\$79,946	\$0
130	44723 SEWER 3 RESIDENCE (UVSD)	-\$17,539	0%	100%	0%	-\$17,539	\$0
131	44724 SEWER 4 RESIDENCE (UVSD)	-\$69,850	0%	100%	0%	-\$69,850	\$0
132	44725 SEWER RESIDENTIAL/UNIT (UVSD)	-\$1,026,504	0%	100%	0%	-\$1,026,504	\$0
133	44726 SEWER COMMERCIAL (UVSD)	-\$85,050	0%	100%	0%	-\$85,050	\$0
134	44727 SEWER COMM LOW/UNIT (UVSD)	-\$789,429	0%	100%	0%	-\$789,429	\$0
135	44728 SEWER COMM MODERAT/UNIT UVSD	-\$240,662	0%	100%	0%	-\$240,662	\$0
136	44729 SEWER COMM MEDIUM/UNIT UVSD	-\$76,227	0%	100%	0%	-\$76,227	\$0
137	44730 SEWER COMM HIGH/UNIT UVSD	-\$252,579	0%	100%	0%	-\$252,579	\$0
138	44731 SEWER APARTMENTS (UVSD)	-\$676,634	0%	100%	0%	-\$676,634	\$0
139	44732 SEW LAT INSPECTION FEE-UVSD	\$0	0%	100%	0%	\$0	\$0
140	44733 SEWER MOBILE HOMES UVSD	-\$391,655	0%	100%	0%	-\$391,655	\$0
141	44735 SEWER COMM LEACHATE UVSD	-\$3,111	0%	100%	0%	-\$3,111	\$0
142	46110 INTEREST ON INVESTMENTS	-\$17,893	0%	100%	0%	-\$17,893	\$0
143	48110 MISCELLANEOUS RECEIPTS	\$0	0%	100%	0%	\$0	\$0
144	48130 COLLECTION OF BAD DEBTS	\$0	0%	100%	0%	\$0	\$0
145	48150 CASH OVER/SHORT	\$8,590	0%	100%	0%	\$8,590	\$0
146	46116 MISCELLANEOUS INCOME	\$0	0%	100%	0%	\$0	\$0
147	52101 UVSD - PREP OF SCO REPORT	\$0	0%	100%	0%	\$0	\$0
148	52102 UVSD - CONSULTANT SERVICES	\$0	0%	100%	0%	\$0	\$0
149	52105 UVSD - SHARE CAP PROJECTS 844	\$0	0%	100%	0%	\$0	\$0
<b>EXPENSES</b>							
150	52100 CONTRACTUAL SERVICES	\$30,690	0%	100%	0%	\$30,690	\$0 Used previous year actuals
<b>Fund 842 (District Rate Stabilization)</b>		<b>FY 2019/20 Budget</b>					
<b>REVENUE</b>							
151	46110 INTEREST ON INVESTMENTS	-\$1	0%	100%	0%	-\$1	\$0
<b>Fund 843 (District Connection Fee)</b>		<b>FY 2019/20 Budget</b>					
<b>REVENUE</b>							
152	44640 CONNECTION FEES	-\$1,003,701	0%	100%	0%	-\$1,003,701	\$0 Used TYD actuals
153	46110 INTEREST ON INVESTMENTS	-\$10,665	0%	100%	0%	-\$10,665	\$0
<b>EXPENSES</b>							
154	61300 BILLING & COLLECTION ALLOCATIO	\$3,332	0%	100%	0%	\$3,332	\$0
155	62100 ADMIN & OVERHEAD ALLOCATION	\$1,313	0%	100%	0%	\$1,313	\$0
<b>Fund 844 (District Capital Fund)</b>		<b>FY 2019/20 Budget</b>					
<b>REVENUE</b>							
156	46110 INTEREST ON INVESTMENTS	\$24	0%	100%	0%	\$24	\$0
157	44835 REIMBURSEMENTS/RETAINAGE	-\$34,068	0%	100%	0%	-\$34,068	\$0
<b>EXPENSES</b>							
158	61300 BILLING & COLLECTION ALLOCATIO	\$607	0%	100%	0%	\$607	\$0

**SCHEDULE 2 – District Cash Flow Proforma**

	Budget FY 2020	Forecast FY 2021	Forecast FY 2022	Forecast FY 2023	Forecast FY 2024	Forecast FY 2025	Forecast FY 2026	Forecast FY 2027	Forecast FY 2028	Forecast FY 2029	Forecast FY 2030	Forecast FY 2031
<b>Sewer Rate Revenue Increase:</b>	<b>0.0%</b>	<b>1.0%</b>	<b>2.0%</b>	<b>1.0%</b>								
<b>Revenue</b>												
2 Sewer Service Charge Revenue	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
3 Other Revenue	0	0	2,000,000	2,000,000	2,000,000	2,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000
<b>Total Revenue</b>	<b>\$7,458,578</b>	<b>\$6,712,910</b>	<b>\$6,800,631</b>	<b>\$6,873,066</b>	<b>\$5,959,138</b>	<b>\$6,049,614</b>	<b>\$6,141,075</b>	<b>\$6,233,485</b>	<b>\$6,326,813</b>	<b>\$6,421,122</b>	<b>\$6,575,073</b>	<b>\$6,673,082</b>
<b>O&amp;M Costs</b>												
3 Sewer Service Charge Revenue	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
3 Other Revenue	0	0	2,000,000	2,000,000	2,000,000	2,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000
23 Total Operating Expenses	\$3,061,410	\$2,888,688	\$2,871,711	\$2,953,885	\$3,038,458	\$3,125,501	\$3,215,088	\$3,307,293	\$3,402,196	\$3,499,875	\$3,600,414	\$3,703,898
<b>Capital Costs</b>												
2 Total Capital Spending	3,222,000	2,222,000	0	0	322,000	0	222,000	0	0	0	0	322,000
2 Bond Proceeds (net of issuance costs)	0	0	0	0	0	0	0	0	0	0	0	0
2 Total Capital Expenses	\$5,572,461	\$2,081,334	\$2,883,270	\$2,114,201	\$2,742,585	\$2,773,231	\$2,805,867	\$2,840,450	\$2,871,050	\$2,904,736	\$2,940,446	\$2,981,193
3 Total Revenue Requirement	\$8,633,871	\$4,970,022	\$5,754,980	\$5,068,086	\$5,781,043	\$5,898,733	\$6,020,955	\$6,147,744	\$6,273,246	\$6,404,611	\$6,540,860	\$6,685,090
3 Beginning Year Balance (all funds*)	6,326,633	4,803,038	6,872,899	7,939,879	9,744,860	9,922,955	10,073,836	10,193,956	10,279,698	10,333,265	10,349,776	10,383,989
32 Use of Connection Fees for Existing Debt	0	0	2,222,000	0	0	0	0	0	0	0	0	0
33 Surplus/(Shortfall)	(\$1,523,595)	\$2,069,861	\$1,066,980	\$1,804,981	\$178,095	\$150,882	\$120,120	\$85,742	\$53,568	\$16,511	\$34,212	(\$12,008)
3 End of Year Balance	4,803,038	6,872,899	7,939,879	9,744,860	9,922,955	10,073,836	10,193,956	10,279,698	10,333,265	10,349,776	10,383,989	10,371,981
3 Minimum Reserve Target	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
3 Available Cash	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
3 Restricted Fund Balance (Connection Fees)	3,333,200	2,333,200	0	0	0	0	0	0	0	0	0	0
<b>Debt Coverage Calculations</b>												
<i>Total Revenue Available for Debt Service</i>												
3 ...with Connection Fees	3,333,200	2,333,200	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	2,000,000
3 Total Yearly Parity Debt Payment	\$2,536,235	\$1,988,533	\$1,997,692	\$2,003,505	\$2,010,434	\$2,015,455	\$2,021,568	\$2,028,701	\$2,030,890	\$2,035,170	\$2,040,446	\$2,049,692
Debt Coverage Ratio (with Connection Fees)	1.34	1.37	1.44	1.44	1.45	1.45	1.45	1.44	1.44	1.44	1.46	1.45
Debt Coverage Ratio (without Connection Fees)	0.94	1.28	1.34	1.35	1.36	1.36	1.35	1.35	1.35	1.34	1.37	1.36



# EXHIBIT E

# MENDOCINO

## Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482  
Telephone: (707) 463-4470 | E-mail: [eo@mendolafco.org](mailto:eo@mendolafco.org) | Web: <http://mendolafco.org>

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May 29, 2020

SENT VIA USPS AND EMAIL TO: [ssangiacomo@cityofukiah.com](mailto:ssangiacomo@cityofukiah.com)

Sage Sangiacomo  
City Manager, City of Ukiah  
300 Seminary Avenue  
Ukiah, CA 95482

RE: City of Ukiah Amended Proposal for Detachment of Overlap Area from Ukiah Valley Sanitation District

Dear Mr. Sangiacomo,

We are in receipt of your letter and associated attachments dated April 29, 2020 requesting to reactivate the City's on-hold 2014 change of organization application proposing detachment of approximately 1,300 parcels, known as the "Overlap Area", from the Ukiah Valley Sanitation District.

Unfortunately, we cannot accept the City's 2014 amended application for filing. Over the last five years since the application was submitted, changes have occurred in application forms, local policies, and state laws governing change of organization applications. Therefore, we will need a new application submittal signed by the City and a minimum deposit fee of \$6,000 (Boundary Changes without 100% landowner consent) in order to conduct proceedings. Upon receipt of the new application, we will initiate the tax share negotiation process with Mendocino County pursuant to RTC §99(b) and conduct a more thorough review of the application materials and determine the appropriate level of CEQA review.

We are currently undertaking the Municipal Service Review (MSR) and Sphere of Influence (SOI) Update process for the Ukiah Valley Sanitation District (UVSD). The MSR/SOI Update process entails a thorough review of local agencies regarding the provision of municipal services and makes a determination of appropriate future boundary lines. Therefore, determining the appropriate service provider for the "Overlap Area" will necessarily and more appropriately be addressed in the UVSD MSR/SOI Update process. Thus, a new application by the City would be processed concurrently with the UVSD MSR/SOI Update.

According to our records, there is a remaining minimum deposit fee balance of \$1,532.75 associated with the City's 2014 application. To date, LAFCo staff has incurred \$676.00 in labor costs in reviewing the City's 2014 amended application materials and preparing this correspondence. Therefore, we will issue the City a refund in the amount of \$856.75 under separate letter.

We look forward to working together further and we wish you and your staff all the best in continuing to provide quality public services in these challenging times.

Sincerely,



Uma Hinman  
Executive Officer

Cc: Philip Williams, City of Ukiah Special Counsel, Welty, Weaver & Currie  
David Redding, General Manager, Ukiah Valley Sanitation District

# EXHIBIT F

## Phil Williams

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**From:** Uma Hinman <eo@mendolafco.org>  
**Sent:** Monday, June 29, 2020 2:13 PM  
**To:** Phil Williams  
**Cc:** 'Sage Sangiacomo'; 'Scott Browne'; dm@uvsd.org; 'John Sharp'  
**Subject:** City of Ukiah detachment application

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hello Phil,

This email is in response to your question regarding whether the City needs to adopt a new Resolution and/or file a new application.

### **Resolution of Application:**

The Resolution of Application approved by the City Council is nearing 6 years old and many things have changed in the interim. The issues listed below warrant a new Resolution of Application and a complete new hard copy application submitted as outlined in the Justification of Proposal application form, including the Fee Agreement and Indemnification form.

- a) The 2014 resolution does not account for changes between the City of Ukiah and the Ukiah Valley Sanitation District related to the 2018 lawsuit settlement and associated new/amended agreements.
- b) The terms and conditions from the 2014 resolution appear to be based on outdated information.
- c) Three of the terms and conditions from the 2014 resolution include a bracketed note at the end indicating that more details would be provided prior to acceptance of the application by the Executive Officer.
- d) The current City Council composition has changed since November 2014 and includes only two of the original Councilmembers that approved the 2014 resolution; therefore, the current City Council should confirm that they want to proceed under the exact same terms and conditions or modify them to bring them current.
- e) The 2014 resolution does not address CEQA or make any environmental determinations per LAFCo Policy 9.5 below. Ordinarily LAFCo expects the applying agency to act as lead agency for the purpose of CEQA compliance and conduct whatever environmental review is appropriate for the project. With a new Resolution of Application, the City may assume such lead agency status for environmental review.
- f) The 2014 resolution does not identify an authorized officer of the City and provide express authorization for that particular individual to act on behalf of the City related to the application and legally bind the City by executing the related application agreements per LAFCo Policy 11.4.11 below.

### **Plan for Services:**

The District's Special Counsel has provided a recent letter raising concerns related to the City's Plan for Services. While it is not necessary for the City and District to reach agreement on the content of the Plan for Services, we recommend that the City consider the adequacy of the current Plan for Services in light of the District's comments and make appropriate revisions. Those revisions can be included with the new Resolution and application. Once we receive the new

Resolution, application, and revised Plan for Services, LAFCo will review them for adequacy. LAFCo may then require additional information before deeming the application complete.

**CEQA Exemption:**

The District's recent Special Counsel letter also raises concerns related to the City's proposed CEQA exemption. He raises concerns that the revenue impact on the District from detachment is large enough to result in significant changes to District operations or services, potentially causing impacts to the environment. If the District can support this claim with substantial evidence, then it could require a greater level of environmental review.

LAFCo Policies:

9.5 ENVIRONMENTAL REVIEW (CEQA)

LAFCo shall operate in accordance with the CEQA and the regulations of the California Resources Agency, which establishes the guidelines for its implementation. Furthermore, whenever an agency other than the Commission is involved in the approval of a project, the Commission prefers that the other agency be designated as the "Lead Agency." For annexations and/or reorganizations involving annexation to a city, the city shall act as the Lead Agency under CEQA for the proposal.

11.4.11 AUTHORIZED OFFICER

Where the application is by resolution of application from an agency, the application and related agreements must be signed by an authorized officer of the agency.

Regards,

Uma

Uma Hinman, Executive Officer  
**Mendocino Local Agency Formation Commission**  
200 S. School Street, Ukiah, CA 95482  
Office: (707) 463-4470  
Cell: (916) 813-0818

# EXHIBIT G



Andrea A. Matarazzo

Partner

andrea@pioneerlawgroup.net

direct: (916) 287-9502

July 8, 2020

*Via Electronic and U.S. Mail*

Honorable Members of the  
Mendocino Local Agency Formation Commission

Uma Hinman, Executive Officer  
200 South School Street  
Ukiah, California 95482

Re: City of Ukiah – Ukiah Valley Sanitation District Detachment  
Our File No. 5364-002

Dear Commissioners and Ms. Hinman:

On behalf of the City of Ukiah and in connection with its application for detachment of the “Overlap Area” from the Ukiah Valley Sanitation District (“UVSD”), we submit these comments in furtherance of the Mendocino Local Agency Formation Commission’s review and consideration of the proposed detachment.

The proposed detachment involves territory within the boundaries of the City; it does not involve, nor will it result in any change in land use, public services, or existing physical environmental conditions. The proposed detachment will result in the City continuing to provide the same sewer services to its residents as it currently does, within established parameters. None of the properties to be detached from UVSD receives physical sewer collection, or sewer disposal services from UVSD, as the City provides these services under an existing agreement with UVSD. Because there will be no change in existing public services or facilities as a result of the detachment, it results in no environmental impacts and is exempt from the California Environmental Quality Act (“CEQA”). (*North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal.App.4th 832, 872-873, 875; *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549, 558-559, 565-566; *Bloom v. McGurk*

(1994) 26 Cal.App.4th 1307, 1311-1312, 1315; see also CEQA Guidelines, § 15125(a) [CEQA baseline is existing conditions].)<sup>1</sup>

We have reviewed the information regarding the proposed detachment submitted on behalf of the UVSD by the Law Offices of John E. Sharp (June 18, 2020) and its assertions pertaining to CEQA. For the reasons summarized below, the statements in the letter about the applicable law are incorrect and the letter does not contain facts to support its assertions, and it is highly unlikely that the District could provide a factual basis for its assertions.

**I. The City of Ukiah, as lead agency, concluded on the basis of substantial evidence that the proposed detachment is exempt from CEQA.**

In advancing its detachment proposal and as lead agency under CEQA, the City of Ukiah made a preliminary assessment of the proposal and determined that there will be no change in existing public services or facilities, but the overlapping jurisdictions of UVSD and the City – the latter of which actually provides the services under contract to UVSD – will be eliminated. The City's record shows that the proposed detachment will:

- Eliminate an unnecessary and confusing overlap of boundaries between the City and UVSD within the detachment area. The City has continuously since 1955 and currently provides operation and maintenance of the sewer collection system and owns and operates the Wastewater Treatment Plant that provide sewer collection and treatment services to the properties to be detached from UVSD as well as all other properties within the District and the City. The City provides these services to District ratepayers under an Operating Agreement with UVSD.
- Eliminate existing and potential future conflicts and inconsistencies within City limits between fees and sewer service regulations adopted by the City Council and the UVSD Board of Directors.

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<sup>1</sup> / A “significant effect on the environment” is a substantial adverse change in the existing physical conditions within the area affected by the proposed action. (Pub. Resources Code, § 21068; CEQA Guidelines, § 15382.)

- Promote coordinated provision of municipal services by a general law City within its boundaries.
- Avoid imposing unnecessary and duplicative costs of UVSD administration on City residents in the overlap area.
- Allow property taxes currently allocated to UVSD within the overlap area and used solely to fund sewer services to be reallocated to more appropriate property tax-related government services.

The City thus concluded, on the basis of substantial evidence, that the proposed detachment results in no change in the existing physical environment and is exempt from CEQA. (CEQA Guidelines, §§ 15261 [ongoing projects]; 15301 [existing facilities]; 15320 [changes in organization of local agencies where no change is made to the geographic area in which previously existing powers are exercised]; 15061(b)(3) [CEQA applies only to projects with the potential to cause a significant effect on the environment].) No possibility exists that the detachment could result in a significant impact on the environment because it would not disturb, disrupt, change or affect the existing physical environment in any way. (*North Coast Rivers Alliance, supra*, 227 Cal.App.4th at pp. 872-873, 875; *Citizens for East Shore Parks, supra*, 202 Cal.App.4th at pp. 558-559, 565-566.)

The City's CEQA conclusions are supported by substantial evidence in the record of its proceedings and are presumed correct as a matter of law. (See Pub. Resources Code, § 21167(d); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1187 [substantial evidence test applies to an agency's factual determination that a project comes within the scope of a categorical exemption]; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251 [same]; see also sections III and IV, *infra*.) Because detachment of the Overlap Area is exempt from CEQA, no further environmental review is required.

**II. The proposed detachment of the Overlap Area is statutorily exempt from CEQA and as such, no "exceptions" to the exemption apply.**

The proposed detachment merely eliminates an unnecessary and confusing overlap of boundaries between the City and UVSD within the detachment area, the effect of which is to continue the status quo without change in regard to the physical environment. The City has continuously *since 1955* and

currently provides operation and maintenance of the sewer collection system and owns and operates the Wastewater Treatment Plant that provide sewer collection and treatment services to the properties to be detached from UVSD as well as all other properties within the District and the City. The City provides these services to District ratepayers under an Operating Agreement with UVSD. The proposed detachment therefore is an ongoing project that is statutorily exempt from CEQA pursuant to CEQA Guidelines section 15261(a).

The proposed detachment does not involve enlargement of capacity or scope of services or make other material revisions, but instead continues ongoing operations within existing parameters. Accordingly, it falls within the ongoing project exemption and does not require CEQA review. "A critical difference between statutory and categorical exemptions is that statutory exemptions are absolute, which is to say that the exemption applies if the project fits within its terms." (*Great Oaks Water Co. v. Santa Clara Valley Water District* (2009) 170 Ca.App.4th 956, 966, fn.8.) The City's determination that the statutory exemption for ongoing projects applies to the detachment is supported by substantial evidence, and no CEQA review is required. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1311.)

**III. Neither the "cumulative impact" nor the "significant effect" exception to the CEQA exemptions applies to the proposed detachment.**

While categorical exemptions under CEQA may sometimes be subject to exceptions, any party challenging an exemption has the burden of producing evidence supporting its claim that an exception applies. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105; *North Coast Rivers Alliance, supra*, 227 Cal.App.4th at p. 851-852; *Fairbank, supra*, 75 Cal.App.4th at p. 1251.)<sup>2</sup> Here, the comment letter submitted by UVSD neither correctly states nor correctly applies any exception to the CEQA exemptions; it ignores the well-established principles of the CEQA baseline; and it produces no evidence in support of any of its assertions. (See, e.g., Pub. Resources Code, §

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<sup>2</sup> / CEQA Guidelines section 15300.2 states six potential exceptions to categorical exemptions, four of which, by their plain language, do not apply here. The only two remaining are the "cumulative impact of successive projects" exception and the "significant effect" exception – both of which, as explained below, are inapposite.

21080(e) [defining “substantial evidence” under CEQA]; *Pala Band of Mission Indians v. County of San Diego* (1998) 64 Cal.App.4th 556, 568-569, 578-580 [comments do not constitute substantial evidence where they consist of mere argument, speculative assertions, and unsubstantiated opinion]; *Visalia Retail, LP v. City of Visalia* (2018) 20 Cal.App.5th 1, 15-16 [comments unsupported by facts, explanation, or critical analysis are not evidence.]

As is discussed in further detail below, detachment of the Overlap Area has no potential to cause a substantial adverse change from the environmental baseline, which baseline includes existing physical conditions and established levels of City services.

**A. The “cumulative impact” exception is inapposite because the proposed detachment provides for the continuation of existing services within established parameters and has no cumulative effects as a matter of law.**

CEQA Guidelines section 15300.2, subdivision (b), provides that “[a]ll exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” Here, there are neither “successive projects of the same type in the same place, over time,” nor cumulative impacts of *any* kind that would remove the proposed detachment from within the scope of the categorical exemptions.

Under CEQA, the effects of a proposed action are measured against the existing baseline of environmental conditions at the time of its review by the lead agency. Here, the proposed detachment continues the status quo; it does not result in any change in the existing baseline of environmental conditions, and as such, there is no possibility that the detachment may cause a significant impact on the environment. (*North Coast Rivers Alliance, supra*, 227 Cal.App.4th at pp. 872-873, 875; *Citizens for East Shore Parks, supra*, 202 Cal.App.4th at pp. 558-559, 565-566.) As was stated in *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 799: “Just as zero when added to any other sum results in no change to the final amount, so, too, when no environmental impacts cognizable under CEQA are added to the alleged environmental impacts of past projects, there is no cumulative increased impact.” (See also *North Coast Rivers Alliance, supra*, 227 Cal.App.4th at p. 875.)

**B. The “significant effect” exception is inapposite because the neither the proposed detachment nor any element of its circumstances is in any way “unusual,” and it cannot result in any significant effect on the environment.**

CEQA Guidelines section 15300.2, subdivision (c), provides that “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” “The application of Guidelines section 15300.2(c) involves two distinct inquiries. First, we inquire whether the Project presents unusual circumstances. Second, we inquire whether there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances.” (*Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 278; see also *Berkeley Hillside Preservation, supra*, 60 Cal.4th at pp. 1097-1098, 1101-1102.) “A negative answer to either question means the exception does not apply.” (*Santa Monica, supra*, 101 Cal.App.4th at p. 800.)

In the circumstances presented here, the answer to *both* questions is negative. First, as the lead agency, the City has found that detachment of the Overlap Area is not unusual in any sense, and no evidence has been offered of any “unusual circumstance” as that term is used in CEQA. The question of whether there exists an unusual circumstance “is essentially a factual inquiry for which the lead agency serves as ‘finder of fact.’” (*Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal. App. 4th 555, 574 [citing *Berkeley Hillside Preservation, supra*, 60 Cal.4th at p. 1114].) While “a party can show an unusual circumstance by demonstrating that the project has some characteristic or feature that distinguishes it from others in the exempt class, such as its size or location,” courts apply the deferential “substantial evidence” standard to an agency’s conclusions in this regard. (*Berkeley Hillside Preservation, supra*, 60 Cal.4th at p. 1105; see also *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1025 [“There is no basis to conclude the addition of 726 additional utility cabinets would be ‘unusual’ in the context of the City’s urban environment, which is already replete with facilities mounted on the public rights-of-way”]; *City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 826-827 [“We conclude that the lease of the Walnut Street site for use as a parole office does not constitute an ‘unusual circumstance’ within the meaning of CEQA”]; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 820 [concluding that “appellants have not identified substantial evidence supporting a finding of unusual circumstances based on the

features of the car wash and coffee shop project[, and that] the City’s findings on this issue are supported by substantial evidence”].) Similar to what the court found in *Walters, supra*, 1 Cal.App.5th at p. 822, it is “axiomatic” that the features of the proposed detachment – which is explicitly contemplated by both the City and the UVSD in the record before LAFCo and the procedures for which are provided in California statute – are typical of such proposals and present no “unusual circumstances.”

Second, detachment of the Overlap Area simply results in the continuation of already-existing services within already established parameters, and has no potential to cause any change in the existing environmental baseline, much less a change which is either adverse or significant. (Pub. Resources Code, § 21068; CEQA Guidelines, §§ 15125(a), 15382.) Therefore, even were there any evidence in the record that the particular features of this proposed detachment somehow present unusual circumstances, there is no evidence anywhere in the record of a substantial, or even of a potentially substantial, adverse change in the physical conditions within the area affected by the proposed detachment because of those unusual circumstances. (See Pub. Resources Code, § 21068, CEQA Guidelines, § 15382.)

**IV. The economic effects of the proposed detachment on UVSD are negligible, if any, and result in no potentially significant impact on the physical environment.**

CEQA analysis is concerned with impacts “related to a physical change” in the environment. (CEQA Guidelines, § 15358(b); see also *id.*, § 15131(a) [economic and social effects of a project are not treated as effects on the environment].) An assertion that the economic effects of a proposed action may result in significant physical environmental impacts must be supported by substantial evidence – facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384(b); see also *id.*, § 15064(f)(5) and (6).) Speculative possibilities or inferences are not evidence, much less evidence which is substantial. (CEQA Guidelines, § 15384(a); *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal.App.5th 1; *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 685, 691.)

Here, the recently completed joint City/District rate study and the existing agreements between the City and the District show that any reduction in UVSD revenue resulting from the proposed detachment will be offset by a

Re: City of Ukiah – Ukiah Valley Sanitation District Detachment  
July 8, 2020  
Page 8

commensurate reduction in UVSD's share of operating costs. (See, e.g., Section 5 in the City-District 2020 Refinancing Agreement, February 24, 2020.) No substantial change in UVSD operations or services can be attributed to the proposed detachment of the Overlap Area. However, even if the District claims that its future ability to provide services outside the City's boundaries is adversely affected by the detachment of the Overlap Area, impacts to required public services are not environmental impacts that are subject to review under CEQA. (See *City of Hayward v. Board of Trustees of California State University* (2015) 242 Cal.App.4th 833, 843 [impacts on required public services are not environmental impacts].)

**V. The statutory period for challenging the lead agency's exemption determination has expired and the proposed detachment is considered exempt from CEQA as a matter of law.**

The City Council formally approved filing an application to detach the Overlap Area by adopting Resolution 2014-43 at a duly noticed public hearing on November 5, 2014. The 180-day statute of limitations to challenge the City's CEQA exemption determination or any claim that the City failed to comply with CEQA in connection with adopting its Resolution of Application expired on May 4, 2015. (Pub. Resources Code, §21167(d).)

The City looks forward to continuing to work with you in processing its application for detachment of the Overlap Area and eagerly anticipates addressing any legitimate concerns you or members of our community may have about the proposed detachment in the appropriate forum.

Thank you for your consideration and for your service to our community.

Very truly yours,

PIONEER LAW GROUP, LLP



ANDREA A. MATARAZZO

AAM:jis

cc: David Rapport  
Phil Williams

# EXHIBIT H

## Phil Williams

---

**From:** Phil Williams  
**Sent:** Friday, August 21, 2020 3:23 PM  
**To:** 'Uma Hinman'  
**Cc:** 'Sage Sangiacomo'; 'John Sharp'  
**Subject:** RE: City of Ukiah Proposed Detachment: Fee Agreement and Indemnification  
**Attachments:** 29JUN20Issues.Detachment.UkiahResponse.pdf

**Importance:** High

Dear Ms. Hinman,

This email is sent in response in part to your email of June 11<sup>th</sup>, requesting additional information and documents. In that email, you specifically requested from the City the following:

- One certified copy of a new City Council Resolution of Application
- One copy of the Justification of Proposal form with original signature
- One copy of the Fee Agreement and Indemnification form with original signature
- One full-scale and one reduced-size proposal map
- One copy of the Plan for Services
- Digital GIS Shapefile of the overlap area parcels
- A minimum deposit fee of \$6,000 (Boundary Changes without 100% landowner consent)

(Note: Items in GREEN have already been provided. The item in BLUE, the last remaining item from your list, is the topic of this email.)

The City has provided to you all of the above documents, in the form you have requested, with the exception of your request for a “certified copy of a new City Council Resolution of Application.”

We understand the last remaining item on your list is a “certified copy of a new City Council Resolution of Application”. As to this item, please see the attached letter. As the attached letter demonstrates, we believe the bases you provided for the need of a new Resolution of Application are inapposite, do not believe you have legal basis for that request, and ask that you provide at your earliest convenience any legal authority for your position that such a document must be submitted.

I look forward to hearing from you.

Sincerely,  
Phil Williams



**Philip Williams, Of Counsel**

707.433.4842, ext. 1102

141 North Street, Suite A

Healdsburg, CA 95448

[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

# EXHIBIT Hh

August 21, 2020



Honorable Members of the  
Mendocino Local Agency Formation Commission

Uma Hinman, Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
*Sent via email: [eo@mendolafco.org](mailto:eo@mendolafco.org)*

Subject: The City of Ukiah's Proposal for Detachment from Ukiah Valley Sanitation District – Response to LAFCo's June 29, 2020, Issues

Dear Ms. Hinman,

I am following up on your June 29, 2020, letter responding to my June 19<sup>th</sup> email. In my email I questioned your request that the City submit a new resolution of application and application to detach the Overlap Area from the Sanitation District. As explained below, the bases for that request do not warrant a new resolution or a new application and we are unaware of any valid bases for your request.

In your June 29<sup>th</sup> email, you listed six issues to support your request for a new Resolution of Application. You also indicated that the City's submitted Plan for Services requires revisions and questioned whether the City's detachment application is exempt from compliance with the California Environmental Quality Act ("CEQA"). We note that both the latter two concerns appear to stem from a letter, dated June 18, 2020, submitted by the Sanitation District. On July 9, 2020, the City responded to both of those issues in separate letters. Despite this, the issues as expressed by you in your June 29<sup>th</sup> email are captured below in bold, and the City's response to each is included below the relevant issue.

As an initial matter, the City understands and does not dispute that under the Cortese-Knox-Hertzberg Act (the "Act") an application shall include: "[a]ny data and information as may be required by any regulation of the commission[, and a]ny additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission."<sup>1</sup> However, the City disputes that this authority authorizes you to require the City to adopt a new resolution of application. The City acknowledges that LAFCo Policy and Procedure Manual, Section 11.4.11, requires the application to be signed by an authorized officer of the applicant (discussed below). The 2014 application was signed by the City Manager, and the City has resubmitted the plan for services signed by the current City Manager.

You haven't cited any other LAFCo policy or provision in the Act that would require a new resolution of application. Unless you can provide legal authority to support your request, the City intends to rely on the application it has already submitted, subject to updates as described below.

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<sup>1</sup> Gov. Code, § 56652, subds (d) and (e).

## Resolution of Application Issues

**Issue #1: The 2014 resolution does not account for changes between the City of Ukiah and the Ukiah Valley Sanitation District related to the 2018 lawsuit settlement and associated new/amended agreements.”**

While there have been some changes since 2014, those changes actually make the effect of detachment on the continued provision of sewer services in the City and the District easier to understand and easier to predict.

First, the City and the Sanitation District have each issued their own bonds to refinance their respective shares of the 2006 WWTP upgrade and expansion project.

Second, Section 5 of the Refinancing Agreement between the City and the District (provided with Ukiah’s Plan for Services) sets forth how sewer system revenue, expenses, and their respective debt service obligations are to be adjusted in the event the Overlap Area is detached from the District.

Third, Section II. F.4 of the Operating Agreement (also provided with Ukiah’s Plan for Services) sets forth how “Capacity Project” ESSUs are transferred in the event the Overlap Area is detached from the District. These provisions of the agreements between the City and the Sanitation District replace Section 4.C (1) and (2) in the Resolution of Application, but all other provisions of the Resolution remain in effect. Both the Refinancing Agreement and the Operating Agreement have already been provided to LAFCo by Ukiah as part of its submitted Plan for Services, and both contemplate the detachment in question and the financial and fiscal implications of that detachment.

Unless there are other changes which render the 2014 application invalid, the City intends to rely on it as supplemented by the already submitted Plan for Services. Please explain what, if any, other changes purportedly affected by the “associated new/ amended agreements” LAFCo believes are relevant to your determination that the proposed application is complete and identify what other data and information are required by the law so that Ukiah can provide the appropriate data and information.

**Issue #2: “The terms and conditions from the 2014 resolution appear to be based on outdated information.”**

Other than as stated in our response to Issue #1, the City is not aware of any other relevant outdated information. If there is other information that needs to be updated, please let us know and we will promptly provide it.

**Issue #3: “Three of the terms and conditions from the 2014 resolution include a bracketed note at the end indicating that more details would be provided prior to acceptance of the application by the Executive Officer.”**

The City’s submitted Plan for Services contains the only additional information the City is aware of. That Plan for Services has been augmented by our letter to LAFCo dated July 8, 2020. The City is considering whether any additional information relevant to the three terms and conditions (namely: sharing facilities and costs, the transfer of monetary assets, and appropriations limit) is necessary and, if it discovers any, will submit any additional information it feels necessary to make its application

complete. As of now, the City has no reason to believe that more information other than that it has already provided are necessary. If there is specific information you believe needs to be provided, please let us know and we will promptly provide it.

As it has communicated to the Sanitation District, the City is ready to meet with the Sanitation District, as provided in Section F.4.II of the Operating Agreement, to address any concerns it has, but, as provided in the agreement, those negotiations do not delay the normal LAFCo procedures for processing the detachment application.

**Issue #4: “The current City Council composition has changed since November 2014 and includes only two of the original Councilmembers that approved the 2014 resolution; therefore, the current City Council should confirm that they want to proceed under the exact same terms and conditions or modify them to bring them current.”**

This position is preposterous and is a dangerous usurpation. It is axiomatic that, not unlike the Commission, the City Council makes decisions that continue in effect beyond the terms of the Councilmembers who participated in making them. Granted, the Council can always change or rescind a past decision. But, until it is changed by subsequent Council action, that decision remains in effect. To assert otherwise renders democratic government impotent.

Because it is somehow apparently relevant, we note in the present case that the terms of the Operating Agreement entered in October 2018 and the Refinancing Agreement, entered in February 2020, demonstrate that the current Councilmembers continue to support detachment of the Overlap Area.

If you have legal authority that, because the composition of the City Council has changed since 2014, the City is required to reapply for detachment of the Overlap Area, please provide that authority to us at your earliest convenience.

**Issue #5: “The 2014 resolution does not address CEQA or make any environmental determinations per LAFCo Policy 9.5 below. Ordinarily LAFCo expects the applying agency to act as lead agency for the purpose of CEQA compliance and conduct whatever environmental review is appropriate for the project. With a new Resolution of Application, the City may assume such lead agency status for environmental review.”**

First, the City made a determination prior to filing its 2014 application that detaching the Overlap Area is exempt from further compliance with CEQA.

Second, that that determination was correct at the time is further supported by the letter from the City’s attorney, Ms. Andrea Matarazzo, dated July 8, 2020, previously provided as part of the City’s response to the Sanitation District’s June 18, 2020, letter to LAFCo

Third, the City agrees that under LAFCo PPM section 9.5 the City should be considered the Lead Agency under CEQA and LAFCo a responsible agency. LAFCo should follow the CEQA Guidelines in using the City’s exemption determination when performing LAFCo’s role as a responsible agency. LAFCo PPM section 9.5 states: “LAFCo shall operate in accordance with the CEQA and the regulations of the California Resources Agency, which establishes the guidelines for its implementation. Furthermore, whenever an agency other than the Commission is involved in the approval of a project, the Commission

prefers that the other agency be designated as the 'Lead Agency.' For annexations and/or reorganizations involving annexing to a city, the city shall act as the Lead Agency under CEQA for the proposal."

The referenced Policy does not support LAFCo's position that a Resolution must "address CEQA or make any environmental determinations." LAFCo PPM section 9.5 simply demonstrates that the Commission prefers that the City, as the applicant, serve as the Lead Agency. In compliance with section 9.5, the City has indeed already assumed Lead Agency status, has complied with CEQA and the Resources Agency's guidelines, and has found the proposed application to be exempt as specified in the Justification for Proposal.

For further support for how the City has complied with CEQA regarding its application for detachment, please see Ms. Matarazzo's July 8<sup>th</sup>, 2020, letter.

**Issue #6: The 2014 resolution does not identify an authorized officer of the City and provide express authorization for that particular individual to act on behalf of the City related to the application and legally bind the City by executing the related application agreements per LAFCo Policy 11.4.11 below.**

LAFCo PPM section 11.4.11 states: "Where the application is by resolution of application from an agency, the application and related agreements must be signed by an authorized officer of the agency." Section 11.4.11 does not require that the resolution of application identify an authorized officer as you contend. It merely requires the resolution to be signed by an authorized officer. The 2014 application was approved by a resolution executed by the Mayor and attested to by the City Clerk. The letter of application was signed by the City Manager. The City Manager is authorized to sign and legally bind the City to legal agreements. If you question his authority and require additional evidence of such, we can provide it, but it does not need to be contained in the resolution of application and is certainly not grounds for a new Resolution of Application, as you contend.

**Plan for Services Issue: "The District's Special Counsel has provided a recent letter raising concerns related to the City's Plan for Services. While it is not necessary for the City and District to reach agreement on the content of the Plan for Services, we recommend that the City consider the adequacy of the current Plan for Services in light of the District's comments and make appropriate revisions. Those revisions can be included with the new Resolution and application. Once we receive the new Resolution, application, and revised Plan for Services, LAFCo will review them for adequacy. LAFCo may then require additional information before deeming the application complete."**

The City of Ukiah has responded to the Sanitation District's many unsupported, and in some cases contravened, assertions about CEQA, financial impacts, and meeting and conferring that pervade its June 18, 2020, letter. Given the complete lack of evidence to support the Sanitation District's assertions, it is impossible for the City to understand whether, let alone how, it is to go about reconsidering its submitted Plan for Services, or what revisions are "appropriate."

Other than what has already been provided by Ukiah in response to the Sanitation District's June 18<sup>th</sup> letter, please identify what data and information are required by the law to address LAFCo's concerns stemming from the Sanitation District's June 18, 2020, letter, so that we can provide the appropriate data and information.

We note the City reached out to the Sanitation District over four months ago to understand any issues the Sanitation District may have with the proposed detachment. We have received no substantive response, aside from the unsupported assertions contained in its June 18<sup>th</sup> letter.

**CEQA Exemption Issue: “The District’s recent Special Counsel letter also raises concerns related to the City’s proposed CEQA exemption. He raises concerns that the revenue impact on the District from detachment is large enough to result in significant changes to District operations or services, potentially causing impacts to the environment. If the District can support this claim with substantial evidence, then it could require a greater level of environmental review.”**

For these and other assertions raised by the Sanitation District in its June 18<sup>th</sup> letter, the City directs LAFCo’s attention to Ms. Matarazzo’s July 8<sup>th</sup> letter, previously provided as part of the City’s response to the Sanitation District’s June 18, 2020, letter to LAFCo. As explained in Ms. Matarazzo’s correspondence, the proposed detachment is statutorily exempt from CEQA as an ongoing project under CEQA Guidelines section 15261. Statutory CEQA exemptions are absolute. Therefore, even if the Sanitation District could support its claim with evidence – which it has not – such claims are irrelevant.

In conclusion, understand that Ukiah is devoted to an efficient and transparent application process as provided for by, and which operates in accordance with, our laws. We hope our responses to your issues will help you in processing the detachment application. Despite these responses, if you continue to maintain that a new resolution of application is required, or that the City’s submitted Plan for Services is still deficient, or that the City has somehow failed to comply with CEQA, please let us know any factual and legal bases for those positions at your earliest convenience so that we may respond appropriately.

Thank you for your consideration.

Sincerely,



Philip A. Williams  
Special Counsel, City of Ukiah

Cc: Sage Sangiacomo, Ukiah City Manager  
John Sharp, Esq., Ukiah Valley Sanitation District

# EXHIBIT I

## Phil Williams

---

**From:** Phil Williams  
**Sent:** Thursday, February 25, 2021 7:10 PM  
**To:** Scott Browne  
**Cc:** Uma Hinman; Sage Sangiacomo; Sean White  
**Subject:** Re: San Joaquin Raptor Rescue Center v. County of Merced

Dear Scott,

I am very familiar with *San Joaquin Raptor* and employ its ruling in those cases where it applies; but from the very facts you provided this holding is clearly not on point as it addresses an agency adoption of a Mitigated Neg Dec. It is completely—and obviously—irrelevant to our facts. In the circumstances of the detachment application, we are dealing with an activity that is exempt entirely from CEQA. The case is simply not on point, and I am very surprised that you would argue it is and am struggling to understand why you would do so.

We have acted entirely within the law.

Here's what the law actually says:

An agency is not required to provide any notice to the public or other agencies that it is considering whether an activity it is going to carry out or approve is exempt. The agency need not provide an opportunity to review or comment on the exemption, and it need not hold a hearing on its exemption determination. (*Robinson v. City & County of San Francisco* (2012) 208 Cal.App.4th 950, 963; *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1385; *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529; see CEQA Guidelines, §§15061–15062; see also *Association for Protection of Environmental Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 730.)

An agency is not required to prepare an initial study or other form of written determination to show that a project is exempt. (*San Lorenzo Valley Community Advocates for Responsible Education, supra*; *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1172; *Magan v. County of Kings* (2002) 105 Cal.App.4th 468.)

Because an agency is not required to make a written determination, a project's approval cannot be challenged on the ground that the agency's exemption determination was documented after the project was approved. (*Robinson, supra*, 208 Cal.App.4th at p. 961.) Public agencies may, but are not required to, file a notice of exemption after approving an exempt activity.

Under Public Resources Code section 21151(c), if a local lead agency has an elected decision-making body, and if a nonelected decision-making body or decision-maker (such as an agency staff member) determines that a project is exempt from CEQA, then that exemption determination must be appealable to the local agency's elected decision-making body. This requirement does not apply, however, to state agencies, or to local agencies that are not governed by an elected decision-making body. (*No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573; *El Morro Community Association v. Department of Parks & Recreation* (2004) 122 Cal.App.4th 1341, 1350.)

Although CEQA does not mandate specific procedures for an exemption determination, the agency's own regulations for implementing CEQA may specify a specific procedure to follow, including any required procedures relating to notice to affected parties, hearings, and findings. Such procedures do not apply to the agency's CEQA exemption determination,

however, unless they are made applicable by the agency's regulations. (See generally *Association for Protection of Environmental Values v City of Ukiah, supra.*)

Findings documenting the basis for an exemption determination are not required by statute or the CEQA Guidelines. As a matter of administrative law, findings are required for quasi-adjudicatory decisions made after an evidentiary hearing required by law. (See generally *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.) This rule rarely applies in exemption cases because hearings are not required by CEQA and are ordinarily not required by agency regulations or ordinances governing exemption determinations.

Accordingly, several courts have held that findings were not required, because no hearing was required by law for the agency's determination that a proposed activity was exempt. (See *CalBeach Advocates, supra* [no findings required because, although city made exemption determination at hearing, no hearing on exemption was required by CEQA or other law]; *Association for Protection of Environmental Values v. City of Ukiah, supra*, at p. 729 [no findings required for exemption determination, because although environmental review was considered at hearing on permit, no hearing on exemption was required by CEQA, city ordinances, city's CEQA regulations, or other law]; *Dehne v. County of Santa Clara* (1981) 115 Cal.App.3d 827, 835 [although board of supervisors voluntarily heard appeal of exemption determination, no findings were required for exemption, because county was not required by law to hear appeal of exemption].)

In *World Business Academy v. State Lands Commission* (2018) 24 Cal.App.5th 476, 499, the court upheld the adequacy of generalized findings to support an exemption determination, holding that more specific findings on the applicability of the exemption, and on the inapplicability of exceptions to the exemption, were not required.

Honestly, I am entirely unsympathetic to your legal arguments on CEQA, the need for a new resolution (which I interpret as an attempt to undo our Republican form of government), or that LAFCo will not perform its obligations absent an SOI Update — the consequences of which further frustrate much needed efforts for the valley some of us call home. I find LAFCo staff's positions, perhaps perfectly exemplified by its unending requests and clear misunderstanding of basic tenets of the law, truly confounding. Its positions have no basis in law but instead reflect decisions of the Executive Director as to whether our detachment application is complete. LAFCo staff's position is crystal clear.

I would like us all to take a step back and perhaps think about all of this for a bit before we gather again on the detachment application. I know I need to.

I appreciate y'all's time today and the robust discussion. As promised, I will follow up with an email summarizing today's key points.

Sincerely,  
Phil

Sent from my iPhone

On Feb 25, 2021, at 4:13 PM, Scott Browne <scott@scottbrowne.com> wrote:

This is a 2013 5th District case that invalidated a CEQA action under the Brown Act because it was not agendaized as a separate action on the County Planning Commission agenda. The Court specifically rejected the County's argument that the adoption of the MND was "implicit" in the action approving the project. Please show me that the agenda for the 2014 resolution of application designated the Exemption determination as an action to be considered by the Council.

I believe the City would be better served by adopting a new resolution and NOE. With that NOE the City could explain why there are not unusual circumstances that would take the City's action out of the exemption. This would provide a strong record should someone want to challenge it--much stronger than the muddled record of the 2014 action.

P. Scott Browne  
Law Office of P. Scott Browne  
131 South Auburn Street  
Grass Valley, CA 95945  
(530) 272-4250  
(530) 272-1684 fax  
scott@scottbrowne.com

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-----Original Message-----

From: Westlaw@westlaw.com <Westlaw@westlaw.com>  
Sent: Thursday, February 25, 2021 3:59 PM  
To: scott@scottbrowne.com  
Subject: San Joaquin Raptor Rescue Center v. County of Merced

Scott Browne sent you content from Westlaw.  
Please see the attached file.

Item: San Joaquin Raptor Rescue Center v. County of Merced  
Citation: 216 Cal.App.4th 1167  
Sent On: Thursday, February 25, 2021  
Sent By: Scott Browne  
Client ID: MENDOCINO LAFCO

Note:

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# EXHIBIT J

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**COLANTUONO**  
**HIGHSMITH**  
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Michael G. Colantuono  
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MColantuono@chwlaw.us

April 26, 2021

*Via Electronic and U.S. Mail*

Honorable Members of the  
Mendocino Local Agency Formation Commission

Uma Hinman, Executive Officer  
200 South School Street  
Ukiah, California 95482

Re: City of Ukiah – Mendocino LAFCO’s Refusal of Ukiah’s Detachment  
Application Pending an Update of Ukiah’s Sphere of Influence

Dear Commissioners and Ms. Hinman,

The City of Ukiah wishes to apply to the Mendocino LAFCO to detach the Ukiah Valley Sanitation District. LAFCO’s Executive Officer indicates the application cannot be completed until LAFCO updates the City’s sphere of influence.

We conclude LAFCO contradicts the Cortese-Knox-Hertzberg Act (CKH) and LAFCO’s own policies.

**1. The City’s Application is Complete**

Under CKH, the Executive Officer has a ministerial duty to issue a Certificate of Filing when the “application for a change of organization or reorganization has met submission requirements and is accepted for filing.” (Gov. Code, § 56020.6.) The Executive Officer indicates she will refuse to issue such a certificate until the City’s 1984 sphere of influence is updated.

Neither CKH nor LAFCO’s Policies and Procedures Manual (“Policies”) require a current sphere of influence to complete an application for detachment. Paragraph 11.4.2 (“Application Materials”) of subsection 11.4 (“Application Requirements”) of section 11 (General Application Requirements”) of LAFCO’s Policies states:

Applications to the Commission must contain all the information and materials required by the CKH Act (G.C. §56652 and 56653), including a

plan for services, as well as the applicable fees or deposit toward fees as specified by the LAFCO Fee Schedule.

(LAFCO's Policies, p. 29.) Neither this Paragraph 11.4.2 nor the cited Government Code sections require a current sphere of influence to accompany a detachment application. The City's application will be complete when the City submits all the documents required under CKH and LAFCO's Policies and pays the necessary fees.

## 2. The City Has No Duty to Update Its Sphere of Influence

Any shortcomings of the City's sphere of influence results from LAFCO's failure to comply with its statutory obligation to update the City's sphere of influence. Government Code section 56425, subdivision (g), states, "On or before January 1, 2008, and every five years thereafter, the commission shall, **as necessary**, review and update each sphere of influence." (Emphasis added.) CKH does not state when an update is "necessary" or what constitutes a "current" sphere — a term it does not use. If LAFCO thinks it "necessary" to update the City's sphere, LAFCO must pursue the update.

LAFCO's Policies acknowledge its duty to update spheres of influence. Paragraph 10.1.3 ("Sphere Updates") of Subsection 10.1 ("Spheres of Influence") of Section 10 ("Spheres, MSRs, and Special Studies") of LAFCO's Policies states, "**The Commission** will review all sphere of influences every five years for each governmental agency providing municipal services." (LAFCO's Policies, p. 25.) Paragraph 10.1.2(c) of the same section defines an "update" to a sphere of influence to mean "a comprehensive change to an established sphere of influence **typically initiated by the Commission.**" (*Ibid.*, emphasis added.)

Further, only LAFCO has an affirmative duty to update a sphere of influence determination. Since LAFCO's sphere of influence determination never expires, the City's application to update its sphere of influence is discretionary. Government Code section 56428, subdivision (a), states, "Any person or local agency **may** file a written request with the executive officer requesting amendments to a sphere of influence or urban service area adopted by the commission." LAFCO's demand is unsupported by statute or its own adopted policies.

## 3. LAFCO's Request for an Updated SOI is Unreasonable and Inconsistent with CKH

While the Executive Officer may request additional data and information, that request must be reasonable and consistent with CKH. Here, LAFCO's argument fails to consider that CKH and LAFCO's own Policies give it the obligation to update the MSR and sphere of influence. The Executive Officer may request additional data and information, but that request cannot serve to reassign to the City LAFCO's statutory duty to prepare these updates. It would be unreasonable to permit the Executive Officer to rewrite CKH through her requests or to use them to blockade a proposal.

- a. There is No Authority to Support a Claim that a SOI can Become "Outdated" so as to Preclude a Finding of Consistency

One of the factors the Commission considers in reviewing proposals is "The sphere of influence of any local agency that may be applicable to the proposal being reviewed." (Gov. Code, § 56668, subd. (i).) Government Code section 56375.5 states, "Every determination made by a commission regarding [detachment] shall be consistent with the spheres of influence of the local agencies affected by those determinations."

While, logically, there can be no finding of consistency if a sphere of influence does not exist — i.e., LAFCO has never adopted one for an agency — we find no authority for a claim that a sphere can become outdated so as to preclude a finding of consistency. To our knowledge, LAFCO has identified no authority for this claim.

LAFCO staff contends that because the City's Sphere of Influence is somehow stale, it is therefore invalid. For support, LAFCO attempts to analogize the CKH to the State Planning and Zoning Law's requirement that a city or county cannot adopt an ordinance that is inconsistent with its general plan's housing element and the statute's detailed requirements for a current housing element updated periodically and reviewed for compliance with statute by the State Department of Housing and Community Development. (Gov. Code, § 65860, subd. (a).)

The comparison to the general plan's housing element is inapposite. While CKH's requirement that a detachment be consistent with a sphere of influence does parallel the requirement that a land use decision be consistent with the housing element (e.g., Gov. Code, § 66473.5 [subdivision map approvals]; Gov. Code, § 65867.5 [development agreements]; Gov. Code, § 65359 [specific plan amendments]), unlike CKH's sphere of influence, the general plan's housing element **can** become stale. (Gov. Code, § 65588, subd. (e) [housing element update required every five to eight years].) CKH provides no time by which a sphere of influence or MSR must be updated. As CKH and the Planning

and Zoning Law are related provisions of the Government Code, had the Legislature intended such an update interval to apply under CKH, it would have provided for it. “Under well-established rules of statutory construction, where an exception to a general rule is specified by statute, other exceptions cannot be implied or presumed [*expressio unius est exclusio alterius*].” (*Embarcadero Municipal Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793.)

- b. Rejecting the City’s Application based on an “Inadequate” MSR Exceeds LAFCO’s Authority Under the CKH

To update the sphere of influence, LAFCO requests a new MSR. Subsection 10.2 (“Municipal Service Reviews”) of Section 10 (“Spheres, MSRs, and Special Studies”) states, “(a) A service review will be prepared prior to, or in conjunction with each sphere of influence establishment, update, or amendment unless LAFCO determines that a prior service review is adequate (i.e., there are no significant changes in existing or anticipated circumstances).”.

Under Government Code section 56652, subdivision (e), an application for a change of organization can include: “Any additional data and information, as may be required by the executive officer, pertaining to any of the matters or factors which may be considered by the commission.” In this case, the additional data and information requested by the Executive Officer is an updated MSR and sphere of influence amendment, without which the Executive Officer claims the Commission cannot make a determination.

To the extent the MSR must be updated, responsibility lies with LAFCO. (Gov. Code, § 56430.) Under the Policies, a new MSR is needed every time a sphere of influence is updated, unless LAFCO concludes an earlier MSR is “adequate.” (Cf. *id.*, subd. (a).) The Policies do not define “adequacy.” Like the sphere of influence, rejecting the City’s application based on an inadequate MSR exceeds LAFCO’s authority because the City should not be penalized for LAFCO’s failure to maintain a current MSR and spheres of influence.

In sum, once the City submits a complete detachment application to the Executive Officer, she must either issue a Certificate of Filing or explain in writing what remains to make the application complete under CKH and the Policies. The absence of a “current” sphere of influence for the City does not provide a valid legal basis to refuse to issue a Certificate of Filing. It is imperative under CKH that LAFCO not ignore the crucial

distinction between the Executive Officer’s ministerial duty to process an application and the Commission’s exercise of its discretionary authority in making a determination about an application after hearing.

The City looks forward to continuing to work with LAFCO in processing its application for detachment of the Overlap Area and eagerly anticipates addressing any legitimate concerns LAFCO and members of our community may have about the proposed detachment in the appropriate forum.

Thank you for your consideration and for your service to our community.

Sincerely yours,



Michael G. Colantuono

MGC:arg

Cc: Philip A. Williams

# EXHIBIT K

September 16, 2020



Hon. Members of the Mendocino County Local  
Agency Formation Commission

Uma Hinman  
Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
Sent via email: [eo@mendolafco.org](mailto:eo@mendolafco.org)

Subject: Written Comments regarding September 14, 2020, Mendocino Local Agency Formation Commission Meeting, Item 6b: Report on Proposed Revisions to Indemnity Clause

Dear Madam Chair, Commissioners, and Ms. Hinman,

I hope this finds you well.

The purpose of this letter is to memorialize the City of Ukiah's efforts and comments made on its behalf to LAFCo staff, the Executive Committee, and the Commission regarding the current indemnity language found in its Fee Agreement and Indemnification form (the "Indemnity Language"). These written comments incorporate by reference the City's oral comments, emails, communications, and documents sent to LAFCo regarding the Indemnity Language, many, though not all, of which are appended to this letter.

**The Indemnity Language is Unlawful and Inappropriate.**

To recapitulate: the Indemnity Language is unlawful and inappropriate. While it may be entirely appropriate for Mendocino LAFCo, as a condition of performing a statutory mandate which it has been asked to perform by an applicant, to ask that applicant to defend, indemnify, and release LAFCo and hold it harmless against causes of action or claims *brought by third parties*, it is entirely inappropriate for it to require the applicant to agree to such a broad waiver *as to the applicant itself*. It therefore ends up improperly wielding its purported statutory authority as a weapon rather than as a tool to, in part, ensure efficient local government within its jurisdiction. This is not an appropriate function of a government purportedly of the people, by the people, and for the people.

Furthermore, the issue here is not a novel one. The Superior Court has already had an opportunity to weigh in on this precise issue in *City of Pismo Beach v. Pacific Harbor Homes, Inc., et al* (Case No. CV13-0383). As the City explained in oral comments before the Executive Committee and the Commission, in *Pismo Beach*, the San Luis Obispo Local Agency Formation Commission ("SLO LAFCo") moved to summarily adjudicate the lawfulness of an indemnity provision nearly identical<sup>1</sup> to the Indemnity Language. In *Pismo*

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<sup>1</sup> The indemnity language at issue in the *Pismo Beach* case was, in whole: "As part of this application, Applicant agrees to defend, indemnify, hold harmless and release the San Luis Obispo Local Agency Formation Commission (LAFCO), its officers, employees, attorneys, or agents from any claim, action or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul, in whole or in part, LAFCO's action on the proposal or on the environmental documents submitted to or prepared by LAFCO in connection with the proposal. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorneys' fees, and expert witness fees that

*Beach*, SLO LAFCo “request[ed] the Court find that the City ... [is], as a matter of law, legally obligated to indemnify LAFCo under the Indemnity Agreements.” The City of Pismo Beach brought a motion for judgment on the pleadings, “the basis [of which] is the theory that the Indemnity Agreements are unenforceable because they lack consideration, are unconscionable, and are void against public policy.” The Court ruled in the City of Pismo Beach’s favor on every point, in some cases finding SLO LAFCo simply failed to meet the burden of proof required. Furthermore, the Court did “not agree that LAFCo has the [legal authority to require applicants to enter into the Indemnity Agreements].”

Importantly, the ruling in *Pismo Beach* is not compelling on Mendocino LAFCo. But it is instructive and, if heeded, may be constructive, if for no other reason than it advertises the affirmative defenses an applicant may assert regarding the Indemnity Language and therefore may inform some of Mendocino LAFCo’s future financial decisions. This last point is of paramount importance.

### **The Indemnity Language Represents One Approach Taken by LAFCo’s in California.**

During oral comments to the Commission on September 14, 2020, the City of Ukiah provided, in contrast to the selective examples provided earlier to the Executive Committee, an example of a LAFCo whose indemnity provisions do not raise the same legal concerns the Indemnity Language does.<sup>2</sup> The City of Ukiah cited to the Fresno LAFCo as an example. During comments, a Commissioner stated that the Fresno LAFCo’s indemnity provisions read the same as the Indemnity Language. This is simply incorrect, and perhaps betrays a surprising misunderstanding of the issue.

Fresno LAFCo’s Indemnity provision<sup>3</sup> states in full:

#### **LEGAL INDEMNITY**

Should the Fresno Local Agency Formation Commission (“Fresno LAFCo”) be named as a party in any litigation (including a “validation” action under CCP 860 et seq.) or administrative proceeding in connection with the Applicant’s proposal, Applicant agrees to indemnify, hold harmless, and promptly reimburse Fresno LAFCo for:

- 1) All reasonable expenses and attorney’s fees in connection with the defense of Fresno LAFCo; and
- 2) Any damages, penalties, fines or other costs imposed upon or incurred by Fresno LAFCo, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of them, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document, which

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may be asserted by any person or entity, *including the Applicant*, arising out of or in connection with the application. In the event of such indemnification, LAFCo expressly reserves the right to provide its own defense at the reasonable expense of the Applicant.” (Emphasis added.)

<sup>2</sup> Furthermore, in direct contrast to oral comments made to the Executive Committee, the Commission was told that redline edits earlier provided by the City on the Indemnity Language were being requested by the City for consideration. To the contrary: the undersigned himself clearly stated to the Executive Committee, and had occasion to repeat to the Commission, that those edits were in fact not being requested, reasons offered for which including that the City had by then already signed the Fee Agreement and Indemnification form and that the edits had been provided as part of a negotiation with LAFCo staff with the intent of arriving at mutually-agreeable language. The City’s position was therefore misrepresented and the Commission presented with a false choice.

<sup>3</sup> See: <http://www.fresnolafco.org/documents/Indemnity%20Agreement.pdf>.

accompanies it. The Fresno LAFCo Executive Officer may require a deposit of funds sufficient to cover estimated expenses of the litigation. Applicant agrees that Fresno LAFCo shall have the right to appoint its own counsel to defend it and conduct its own defense in the manner it deems in its best interest, and that such actions shall not relieve or limit Applicant's obligations to indemnify and reimburse defense costs. Applicant may be required by Fresno LAFCo to execute an additional indemnity agreement as a condition of approval for this application. Such an agreement in no way limits the effect of obligations provided for herein.

In contrast, Mendocino LAFCo's Indemnity Language states in full (emphasis added):

#### 7. INDEMNITY

As part of this application, applicant and real property in interest, if different, agreed to defend, indemnify, hold harmless, and release the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of the above, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, or employees.

On their faces, the two provisions are not the same. Nor do they both raise the precise issue of attempting to require the applicant itself to defend, indemnify, hold harmless, and release the relevant LAFCo. Between the two, only Mendocino LAFCo's Indemnity Language attempts to require that of the applicant. Fresno LAFCo does not. This demonstrates that some LAFCo's in California have chosen not to attempt to require the type of broad indemnification from applicants that Mendocino LAFCo has chosen to impose.<sup>4</sup>

The plain language of the two provisions clearly indicate the different approaches LAFCo's in California take, and which is a repeated point the City has made to Mendocino LAFCo staff and legal counsel and to the Executive Committee and the Commission. Specifically, the portion of Mendocino LAFCo's Indemnity Language which gives the most pause is that Mendocino LAFCo's Indemnify Language *specifically attempts to include the applicant* in the broad indemnification and waiver language found in the first phrase, an attempt specifically not made by Fresno LAFCo. As the City has repeatedly indicated, this approach is neither lawful, appropriate, or helpful in the long run.

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<sup>4</sup> This despite the fact that a plain reading of the Indemnity Language would support the absurd conclusion of an applicant, having prevailed on a challenge to a LAFCo determination, still being required to indemnify the LAFCo for the LAFCo's defense fees and costs, and, in the event the applicant was awarded monetary damages, of the applicant itself responsible for satisfying such a judgment. Such a scenario clearly "bar[s] any possibility of meaningful recovery" (see *Lennar Homes of California, Inc. v. Stephens* (2014) 232 Cal.App.4th 673, 693, [citing *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1407]) for any claims brought by an applicant and has a chilling effect on applicants' pursuit of justice.

## The City's Current Position

As is evident in the record, and which was made clear in oral comments to both the Executive Committee and the Commission, the City has signed the Fee Agreement and Indemnification form, despite its persistent and restated reservations about the Indemnity Language in that form. It has done so for two reasons: First, Mendocino LAFCo made clear that the City had to sign the form *as is* in order for its application to proceed;<sup>5</sup> and second, despite finally signing the form, the City understands, and has made clear in its cover letter to the Fee Agreement and Indemnification, that the Fee Agreement and Indemnification form must be construed to comport with the law, including fundamental notions of due process, and therefore places a firm reliance on the rule of law.<sup>6</sup>

Finally, at the September 14th, 2020, meeting, a Commissioner asked why the City did not simply seek redress on this issue in the courts preemptively rather than resorting to the engagement it has with LAFCo staff, legal counsel, and the Commission. Aside from such an approach raising the obvious issues of exhaustion of administrative remedies and ripeness, of far more salience is that such an approach is simply antithetical to the City's preferred path of constructive engagement. Instead of running into court, it has unapologetically and tirelessly committed itself to thoughtful and persistent engagement on issues it believes of paramount importance to the future of its residents and of the entire Ukiah Valley. It has done so under the stubborn belief that the sincere appeal to the values of our neighbors, including their respect for the rule of law, will, in the end, prevail. It still clings to that belief. The very last thing the City wants to do is engage in litigation with other public agencies in Ukiah Valley.

Thank you for your time and your consideration.

Sincerely,



Philip A. Williams  
Special Counsel, The City of Ukiah

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<sup>5</sup> On whether this is appropriate or even lawful, see Rakoff, *Contracts of Adhesion: An Essay in Reconstruction*, 96 Harv.L.Rev. 1174, 1198-1206 (1983) (arguing generally that form terms in contracts of adhesion ought to be deemed presumptively unenforceable). Similar to an adhesion contract, the Fee Agreement and Indemnification form was offered to Ukiah "on essentially a take it or leave it basis." See *Wheeler v. St. Joseph Hosp.* (1976) 63 Cal.App.3d 345, 356. Reflecting the exact relative position of the City and Mendocino LAFCo in the case of the Indemnity Language, the *Wheeler* court also stated that "the distinctive feature of a contract of adhesion is that the weaker party has no realistic choice as to its terms." In order for Ukiah to pursue changes in organization as provided for under the Cortese-Knox-Hertzberg Act, it must sign Mendocino LAFCo's Fee Agreement and Indemnification form.

<sup>6</sup> See, e.g., Cal. Civ. Code, § 1668: "All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." See also Cal. Civ. Code, § 1670.5, (a) "If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." And, *id.*, (b) "When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination." See also *Simmons v. Cal. Institute of Tech.* (1949) 34 Cal.2d 264, 272 ("Consideration must actually be bargained for as the exchange for a promise.")

**Attachments:**

Attachment A: 04 March 2020 Williams-Hinman Email String

Attachment B: 07 May 2020 Williams-Hinman Email String

Attachment C: 29 July 2020 Williams-Hinman Email String

Attachment D: 07 August 2020 Williams-Hinman Email String

Attachment E: Signed Fee Agreement and Indemnification Form with Cover Letter

**CC:** Mr. Sage Sangiacomo, Ukiah City Manager

**Phil Williams**

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**From:** Phil Williams  
**Sent:** Wednesday, March 4, 2020 3:29 PM  
**To:** eo@mendolafco.org  
**Subject:** RE: Special Project engagement

Thanks Uma.

Yes ma'am, given the right conditions for an agreement, we are very interested in pursuing such an approach.

Yours,

Phil



**Philip Williams, Of Counsel**  
707.433.4842, ext. 1102  
141 North Street, Suite A  
Healdsburg, CA 95448  
[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

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**From:** Uma Hinman <eo@mendolafco.org>  
**Sent:** Wednesday, March 4, 2020 3:26 PM  
**To:** Phil Williams <pwilliams@weltyweaver.com>  
**Subject:** RE: Special Project engagement

Hello Phil,

Thank you, doing well.

I forwarded your email to our Legal Counsel to review and haven't heard back yet. I'll check in with him and see if he's had a chance to review them yet.

Question: is the City interested in pursuing a special project in the near term if the terms of the agreement can be worked out? Your response will help me in trying to prioritize the request with our Legal Counsel.

Regards,  
Uma

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**From:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Sent:** Wednesday, March 4, 2020 3:17 PM  
**To:** [eo@mendolafco.org](mailto:eo@mendolafco.org)  
**Subject:** RE: Special Project engagement

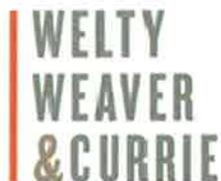
Hi Uma,

I hope you're well.

I wanted to circle up with you on your thoughts about my suggested edits to the Fee Agreement. Please let me know if you have any questions, concerns, or additional thoughts.

Yours Sincerely,

Phil



**Philip Williams, Of Counsel**

707.433.4842, ext. 1102

141 North Street, Suite A

Healdsburg, CA 95448

[weltyweaver.com](http://weltyweaver.com)

***Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.*

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**From:** Uma Hinman <[eo@mendolafco.org](mailto:eo@mendolafco.org)>  
**Sent:** Saturday, February 22, 2020 5:07 PM  
**To:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Subject:** RE: Special Project engagement

Phil,

I have received your email and comments. Thank you for taking the time to outline your concerns. I will go over these with our Legal Counsel and get back to you.

Regards,  
Uma

Uma Hinman  
Hinman & Associates Consulting, Inc.  
<http://umahinman.com>  
(916) 813-0818

---

**From:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Sent:** Thursday, February 20, 2020 1:02 PM  
**To:** [eo@mendolafco.org](mailto:eo@mendolafco.org)  
**Cc:** Craig Schlatter <[cschlatter@cityofukiah.com](mailto:cschlatter@cityofukiah.com)>  
**Subject:** RE: Special Project engagement

Dear Uma,

I hope you are well.

First, I want to thank you for your thought about pursuing our efforts via the Special Projects route. I believe that an agreement, with the right conditions, will provide a constructive framework within which Mendo LAFCo and Ukiah can operate. I continue to appreciate your constructive and well-informed suggestions to move forward.

I have several concerns with the Agreement you provided, but will highlight the three I think most important and which are best reflected in the attached suggested edits. You will see that my suggestions result in significant changes with important legal implications. Nonetheless, I do believe that thoughtful, informed agreement between LAFCo and the City will go very far to drive toward a fair and durable solution.

The first concern I have is in ensuring information Ukiah shares with LAFCo is used to pursue its interests in the Detachment. To address that concern, I have provided language that expresses what I hope is our Common Interest and provisions that provide a modicum of assurance as to how information and material provided in pursuit of that Common Interest will be treated.

The second concern is ensuring that City's resources are spent on advancing the City's interests. I have therefore provided suggestions that ensure any expenditure of funds from the deposit are specifically authorized by the City.

The third concern is ensuring the City retains all rights it has to challenge an adverse decision. The indemnification paragraph severely restricted the City's ability to advance the interests of its residents in the unfortunate – and hopefully unlikely – scenario of an ill-supported or unlawful determination by LAFCo regarding the Detachment. I add that it appears perfectly reasonable to me that the City would indemnify and defend LAFCo in the case of a third party challenging a determination by LAFCo, especially in light of the fact that much of the work product will come from the City and such product will likely form the basis of any determination by the Commission.

I have worked very hard to provide suggestions to the Agreement that I intend to be fair and to not inappropriately prejudice either Mendo LAFCo or the City. I hope those suggestions will be received for what they are: an acknowledgement of yet another helpful suggestion by you for a path forward and a recognition of the Party's respective interests and the inherent risks of proceedings like these. I believe the provisions in the version I provide help us move forward constructively.

Of course, I welcome any thoughts, questions, or concerns you may have, and look forward to hearing from you.

Sincerely,

Phil Williams



**Philip Williams, Of Counsel**

707.433.4842, ext. 1102

141 North Street, Suite A

Healdsburg, CA 95448

[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

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**From:** Uma Hinman <[eo@mendolafco.org](mailto:eo@mendolafco.org)>

**Sent:** Friday, February 7, 2020 11:38 AM

**To:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>; 'Craig Schlatter' <[cschlatter@cityofukiah.com](mailto:cschlatter@cityofukiah.com)>

**Subject:** Special Project engagement

Good morning, Phil and Craig:

As has been noted in some of our discussions, LAFCo's budget limitations make it difficult for staff and our Legal Counsel to engage at length in discussions of proposals and research. In order to more effectively engage in the various discussions and potential proposals that we have been meeting about, I recommend that we enter into a special project agreement that will allow LAFCo to be reimbursed for staff and LAFCo Legal Counsel participation. Per our policies, LAFCo staff are to require Pre-Application Requests for reimbursement of staff time after an hour of consultation because we don't have full time staff or a budget that allows LAFCo to support such costs.

By way of process, I would make a recommendation to the Commission at our March 2nd Commission meeting that they designate the City of Ukiah discussions and proposals as a special project. Our standard agreement is available on our website if you would like to review the language: <http://mendolafco.org/wp-content/uploads/2019/02/Fee-Agreement-and-Indemnification-2019-1.pdf>. A deposit would be required to initiate the special project and staff and Legal Counsel time would be billed at cost per our hourly rates.

Please be advised that without such an arrangement, the ability of LAFCo staff and LAFCo Legal Counsel to engage at length are limited at the pre-application stage due to Commission policy and budget limitations.

Please contact me with any questions. I will need to know by February 21<sup>st</sup> in order to get it on the March 2<sup>nd</sup> agenda.

Regards,  
Uma

Uma Hinman, Executive Officer  
**Mendocino Local Agency Formation Commission**  
200 S. School Street, Ukiah, CA 95482  
Office: (707) 463-4470  
Cell: (916) 813-0818

**Phil Williams**

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**From:** Phil Williams  
**Sent:** Thursday, May 7, 2020 10:17 AM  
**To:** eo@mendolafco.org  
**Subject:** RE: Comments on Mendo LAFCo Meeting Item 5a

Yes ma'am, please do.

Sincerely,  
Phil



**Philip Williams, Of Counsel**  
707.433.4842, ext. 1102  
141 North Street, Suite A  
Healdsburg, CA 95448  
[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

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**From:** Uma Hinman <eo@mendolafco.org>  
**Sent:** Thursday, May 7, 2020 9:52 AM  
**To:** Phil Williams <pwilliams@weltyweaver.com>  
**Subject:** RE: Comments on Mendo LAFCo Meeting Item 5a

Phil,

I have responded to your Tuesday email regarding the indemnification agreement discussion on Monday's Agenda Item 5a. Please confirm that you would still like me to share the letter below with the Commissioners.

Regards,  
Uma

Uma Hinman, Executive Officer  
**Mendocino Local Agency Formation Commission**  
200 S. School Street, Ukiah, CA 95482  
Office: (707) 463-4470  
Cell: (916) 813-0818

---

**From:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Sent:** Wednesday, May 6, 2020 10:31 AM  
**To:** Uma Hinman <[eo@mendolafco.org](mailto:eo@mendolafco.org)>  
**Subject:** Comments on Mendo LAFCo Meeting Item 5a

Dear Uma,

I hope you are well.

I would appreciate you passing along the following comment offered in response to discussion among the Commissioners on Item 5a of Monday's meeting. Given the format, I was unable to offer these comments quickly enough in a way that didn't detract from following discussions.

Thank you,

Phil

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Dear Madam Chair and Commissioners,

My name is Phil Williams; I represent the City of Ukiah as Special Water Counsel, work which includes the City's efforts related to changes in organization – matters which will bring me before you in that capacity often in the coming months.

I hope you each are well and appreciate the lengths you and your staff are going to during these rather difficult times. I applaud the efforts Mendo LAFCo has gone to to ensure public awareness and participation during times that would, absent that leadership and commitment, otherwise militate against robust public discourse.

Comments that have recently been offered by the Commissioners, including some discussion related to Item 5a from Monday's meeting, prompt me to offer comments to be sure the City of Ukiah is not misunderstood or its interest misrepresented. In February I offered edits to LAFCo's Fee Agreement for Special Projects to Ms. Hinman. As part of those edits, I touched on the issue of indemnification. During Monday's discussion on Item 5a, I was left with the impression, based on comments from the Commission, that perhaps my thoughts on the scope of indemnification have been misunderstood. The comment specifically referenced a concern that applicants may be unwilling to cover costs associated with applications for detachment, etc., that come before LAFCo, and that therefore LAFCo may need increased legal reserves to defend itself.

Allow me to state Ukiah's interests clearly: while it may be entirely appropriate for an applicant to agree, as part of the Special Project Fee Agreement, to indemnify and hold LAFCo harmless against claims or challenges to a LAFCo decision *brought by a third party*, it is very likely inappropriate – indeed, and as I've expressed before, I wonder whether it is even lawful – to insist that *the applicant itself* waive claims it may rightfully have against LAFCo in the case of a determination made without the support of substantial evidence. Given the republican values at stake, I question why a public agency with LAFCo's responsibilities would even ask for the latter. For the former should provide LAFCo with more than sufficient comfort from financial and legal perspectives that its determinations, so long as they are proper and based on the requisite evidence and findings, will be defended by the applicants whose applications opened the matter in the first place. We all have a right to feel we can trust our allies; you can be sure that Ukiah will continue to prove itself a staunch and unwavering comrade in our shared vision for a brighter future for Ukiah.

This distinction is an important one with implications not only on LAFCo policy and financial considerations, but, as you are the body charged with ensuring the efficient and non-duplicative provision of resources in Mendocino County, also on the future health of our community. For our neighbors, families, and community are going through exceedingly difficult times – the only way we will navigate the challenges before us to secure a bright future is for each of us to give to the other our very best. The City of Ukiah is the economic, cultural, and political heartbeat of Mendocino County, and, as such, you can be sure that we will continue to offer you the best information we possibly can, all in a spirit of honesty and forthrightness, to enable you to perform your obligations to our community.

These shared obligations may perhaps require increased attention and renewed devotion to republican principle now that we find ourselves together thrust into a Brave, New World. Therefore, in the words of President Lincoln, let us strive to finish the work we are in, "with malice toward none, with charity for all, [but] with firmness in the right as God gives us to see the right[.]"

Thank you for your consideration and for your service.

Yours Sincerely,

Phil Williams



**Philip Williams, Of Counsel**

707.433.4842, ext. 1102

141 North Street, Suite A

Healdsburg, CA 95448

[weltyweaver.com](http://weltyweaver.com)

***Please Note:*** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

**Phil Williams**

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**From:** Phil Williams  
**Sent:** Wednesday, July 29, 2020 2:29 PM  
**To:** eo@mendolafco.org  
**Cc:** 'Sage Sangiacomo'; 'Douglas Hutchison'; 'Scott Browne'  
**Subject:** RE: Ukiah Valley Fire District Annexation of the City of Ukiah for Fire Services

Thank you Uma.

While I certainly appreciate the fact that you are working to give this full consideration, I feel compelled to share with you that I think our proposed edits – namely, limiting the requirement that the applicant indemnify LAFCo from claims brought by third parties and not also those that may be brought by the applicant – presents a legal issue as well – and perhaps a rather fundamental one. I do not see how the law allows for LAFCo to avoid performing certain statutory obligations (in our case, reviewing and acting on applications for annexations) unless an applicant agrees to waive rights it has in law or in equity.

Please understand I am not trying to be obstreperous, but am simply trying very hard to keep this constructive.

If Mr. Brown has time, I would very much appreciate talking with him about this, as, from my view, I think our edits primarily implicate significant and fundamental legal issues about the obligations of LAFCo and the rights of applicants.

Yours Very Sincerely,

Phil



**Philip Williams, Of Counsel**

707.433.4842, ext. 1102

141 North Street, Suite A

Healdsburg, CA 95448

[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

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**From:** Uma Hinman <eo@mendolafco.org>  
**Sent:** Monday, July 27, 2020 6:32 PM  
**To:** Phil Williams <pwilliams@weltyweaver.com>  
**Cc:** 'Sage Sangiacomo' <ssangiacomo@cityofukiah.com>; 'Douglas Hutchison' <dhutchison@cityofukiah.com>; 'Scott Browne' <scott@scottbrowne.com>  
**Subject:** RE: Ukiah Valley Fire District Annexation of the City of Ukiah for Fire Services

Phil,

Our Legal Counsel has reviewed the City's proposed changes to LAFCo's fee agreement and indemnification. We have been advised that the changes are a policy issue and cannot be considered at the staff level. We are working to move the proposal through the appropriate channels.

Regards,  
Uma

Uma Hinman, Executive Officer  
**Mendocino Local Agency Formation Commission**  
200 S. School Street, Ukiah, CA 95482  
Office: (707) 463-4470  
Cell: (916) 813-0818

---

**From:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Sent:** Wednesday, July 15, 2020 12:55 PM  
**To:** Uma Hinman <[eo@mendolafco.org](mailto:eo@mendolafco.org)>  
**Cc:** Sage Sangiacomo <[ssangiacomo@cityofukiah.com](mailto:ssangiacomo@cityofukiah.com)>; Douglas Hutchison <[dhutchison@cityofukiah.com](mailto:dhutchison@cityofukiah.com)>  
**Subject:** Ukiah Valley Fire District Annexation of the City of Ukiah for Fire Services

Dear Uma,

I hope you're well.

Recently, the Ukiah Valley JPA and the City of Ukiah directed their staffs to begin the process of annexing the City of Ukiah into the Fire District. As you know, fire season is quickly approaching, and the need for effective fire services across our valley, given the past several years, has reached the level of an imperative. Sage has directed me to manage this annexation and to work for Doug (both of whom are cc'd) in getting it approved by LAFCo as efficiently as possible. I would appreciate some of your time in the near future so that I can best understand what LAFCo will need – in particular, I would like to get two things from you as quickly as possible: 1) LAFCo's proposed fee to cover at least initial costs associated with this proposed annexation; and 2) an outline or example that we can use for the Plan for Services.

As an initial matter, and related to my fee question, I would like to propose the attached fee agreement and indemnification, which has, in redline, what I believe to be appropriate and targeted edits on the indemnification issue in paragraph 7. My suggested edits merely make clear that the indemnification and waiver language apply to third parties and not to the applicant. I would appreciate your thoughtful consideration of these suggestions.

I promise to be as responsive to you as I possibly can be on this issue, believing this to be yet another step forward in a brighter future for our community. Of course, you should never hesitate to reach out to me directly with any questions or concerns. My cell is (931) 237-7455.

Yours Sincerely,

Phil Williams



**Philip Williams, Of Counsel**  
707.433.4842, ext. 1102  
141 North Street, Suite A  
Healdsburg, CA 95448  
[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

**Phil Williams**

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**From:** Phil Williams  
**Sent:** Friday, August 7, 2020 3:19 PM  
**To:** eo@mendolafco.org  
**Subject:** RE: City of Ukiah Proposed Detachment: Fee Agreement and Indemnification

I appreciate you noticing that, Uma, and your raising the question.

I feel it is better to pursue the question of indemnification, which Mr. Brown characterized as a policy issue, in the policy forum, in part because that may be where these discussions are most constructive and in part because I want to move this along. I believe the cover letter preserves the legal concern I have always had about this language by making clear that these agreements of course must be construed to comport with the law, including due process.

For purposes of the San District detachment, then, we no longer are asking for the edits I had earlier proposed, though imagine that we will engage in the policy forum to address this language generally. Allow me to add that my belief the existing language is unlawful is entirely sincere and am confident a court would agree – though ardently hope to avoid the resulting mess seeking that opinion would create for us both. Hence the attachment I provided.

Thanks again for the follow-up, Uma. Please feel free to reach out with any questions or concerns.

Yours Sincerely,  
phil



**Philip Williams, Of Counsel**  
707.433.4842, ext. 1102  
141 North Street, Suite A  
Healdsburg, CA 95448  
[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.

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**From:** Uma Hinman <eo@mendolafco.org>  
**Sent:** Friday, August 7, 2020 3:04 PM  
**To:** Phil Williams <pwilliams@weltyweaver.com>  
**Subject:** RE: City of Ukiah Proposed Detachment: Fee Agreement and Indemnification

Hello Phil,

I noticed that the attached Fee Agreement and Indemnification is our standard form. Do you still wish to pursue the proposed revisions that you sent in mid-July?

Thank you,  
Uma

**From:** Phil Williams <[pwilliams@weltyweaver.com](mailto:pwilliams@weltyweaver.com)>  
**Sent:** Friday, August 7, 2020 2:12 PM  
**To:** Uma Hinman <[eo@mendolafco.org](mailto:eo@mendolafco.org)>  
**Cc:** Sage Sangiacomo <[ssangiacomo@cityofukiah.com](mailto:ssangiacomo@cityofukiah.com)>  
**Subject:** City of Ukiah Proposed Detachment: Fee Agreement and Indemnification  
**Importance:** High

Dear Uma,

I hope you are well.

This email is sent in response in part to your email of June 11<sup>th</sup>, requesting additional information and documents. In that email, LAFCo requested from the City:

- One certified copy of a new City Council Resolution of Application
- One copy of the Justification of Proposal form with original signature
- One copy of the Fee Agreement and Indemnification form with original signature
- One full-scale and one reduced-size proposal map
- One copy of the Plan for Services
- Digital GIS Shapefile of the overlap area parcels
- A minimum deposit fee of \$6,000 (Boundary Changes without 100% landowner consent)

(Note: Items in GREEN have already been provided. Items in BLUE will be provided as originals as soon as we can set a time for me to deliver those items to you.)

As indicated, this email and the attached document are provided in response to LAFCo's request for "One copy of the Fee Agreement and Indemnification form with original signature." The scanned copy of the Fee Agreement is simply provided for our records.

I have the original signed documents and the \$6,000.00 payment ready to deliver. Can you please let me know a time I can come by the LAFCo office to personally deliver the Fee Agreement and the minimum deposit fee? I hesitate to mail them or leave them by the LAFCo door.

I do trust you are well and will look forward to hearing from you.

Sincerely,  
Phil



**Philip Williams, Of Counsel**  
707.433.4842, ext. 1102  
141 North Street, Suite A  
Healdsburg, CA 95448  
[weltyweaver.com](http://weltyweaver.com)

**Please Note:** I check my email at 10:00 a.m. and 3:00 p.m. daily; if your message is urgent, please call me at the number listed above. Thank you.



August 7, 2020

Uma Hinman, Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
Sent via email: [eo@mendolafco.org](mailto:eo@mendolafco.org)

Subject: City of Ukiah's Proposal for Detachment from Ukiah Valley Sanitation District – Mendocino LAFCo's Fee Agreement and Indemnification

Dear Ms. Hinman,

I hope you are well.

Attached to this letter is the City of Ukiah's agreement to Mendocino LAFCo's Fee Agreement and Indemnification along with the requested \$6,000.00 minimum deposit fee.

In signing the Fee Agreement and Indemnification for the Proposed Detachment and providing the associated minimum deposit fee, the City of Ukiah understands that the Fee Agreement and Indemnification must be construed to comport with the law, including fundamental notions of due process.

The City of Ukiah looks forward to our continuing efforts to secure a bright future for all of Ukiah. Thank you for your consideration and your service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Philip A. Williams", is written over a light blue circular stamp.

Philip A. Williams  
Special Council  
The City of Ukiah

CC: Sage Sangiacomo, City Manager

# MENDOCINO

## Local Agency Formation Commission

Ukiah Valley Conference Center | 200 South School Street | Ukiah, California 95482  
Telephone: (707) 463-4470 | E-mail: eo@mendolafco.org | Web: <http://mendolafco.org>

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### FEE AGREEMENT and INDEMNIFICATION

#### 1. DEPOSIT

Applicant agrees to pay the following deposit with execution of this agreement: **\$ 6,000.00**. The deposit shall be applied toward services performed and costs expended on the Applicant's behalf. The deposit will be placed in LAFCo's general account and application expenses incurred by LAFCo will be tracked separately from other LAFCo expenses. No interest will accrue on the deposit. LAFCo will keep an accounting of amounts charged against the deposit. In the event any balance of the deposit remains after subtraction of all LAFCo charges, the balance will be refunded to Applicant upon completion of application services. When the deposit is exhausted, LAFCo will begin monthly billing or request an additional deposit.

#### 2. MONTHLY BILLING OR ADDITIONAL DEPOSIT

Should LAFCo application expenses exceed the initial deposit, an additional deposit will be requested or the Applicant will be billed the 5<sup>th</sup> of each month for all services performed and costs expended in the previous billing month. Applicant agrees to pay all amounts shown as due and owing by the 10<sup>th</sup> of the following month, unless an alternate payment schedule is agreed to by LAFCo. The period from the time of billing to the 10<sup>th</sup> of the following month is known as the "payment period".

#### 3. OBJECTIONS TO BILL

Applicant agrees that any questions or disagreements Applicant may have concerning the bill or amount due shall be communicated to LAFCo prior to the end of the payment period, along with payment of any undisputed portion of the bill. If Applicant fails to communicate to LAFCo any objection to the bill prior to the end of the payment period, Applicant is agreeing that the amount stated is correct and is giving up any right to later deny payment to LAFCo.

#### 4. LATE PAYMENTS

(1) Although both parties agree and expect that Applicant shall pay each bill in full when due, should Applicant fail to pay the full amount due within the payment period, Applicant understands that LAFCo will cease work.

(2) If an Applicant is repeatedly late in payment, or fails to pay an outstanding charge for 60 days or more, the LAFCo Executive Officer may require an additional deposit to assure payment of future LAFCo charges, before LAFCo recommences work.

#### 5. STAFF ASSIGNMENTS; CONFLICTS OF INTEREST

(1) Except as provided below, LAFCo will assign staff to tasks as it determines appropriate, in its absolute discretion. However where LAFCo determines that there is a need for an outside consultant, it will follow its policies in connection with hiring of outside consultants.

(2) If Applicant believes that any staff has a conflict of interest that could adversely affect the handling of your application, a written request for disqualification must be submitted within 15 days of execution of this agreement. The letter should state the conflict of interest. The Executive Office will make an initial determination. If the request is denied, Applicant may request in writing that the Commission consider the conflict within 15 days of Executive Officer's denial notification.

(3) In the event of disqualification of a regular LAFCo staff member, Applicant understands that outside contract staff must be hired. Applicant agrees to pay the charges incurred for any such contract staff even though they may exceed the charge-out rates of staff member being replaced.

#### 6. PAYMENT NOT DEPENDENT ON FUTURE ACTIONS

Applicant understands and agrees that the LAFCo charges are payable regardless of whether the application is ultimately filed, withdrawn, denied or otherwise terminated prior to completion. In the event of withdrawal, Applicant shall be responsible for all charges incurred prior to the time of receipt of written notice of application withdrawal, plus LAFCo's reasonable charges for file closure.

**7. INDEMNITY**

As part of this application, applicant and real property in interest, if different, agreed to defend, indemnify, hold harmless, and release the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, and employees from any claim, action, or proceeding brought against any of the above, the purpose of which is to attack, set aside, void, or annul the approval of this application or adoption of the environmental document which accompanies it. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness fees that may be asserted by any person or entity, including the applicant, arising out of or in connection with the approval of this application, whether or not there is concurrent passive or active negligence on the part of the Mendocino Local Agency Formation Commission, its agents, officers, attorneys, or employees.

**8. WAIVER.**

LAFCo's failure to enforce any term hereof shall not be deemed to be a waiver. No delay or omission in the exercise of any remedy of LAFCo on default shall impair such right or remedy or be construed as a waiver thereof, unless waiver is set forth clearly in writing and signed by the waiving party. Such written waiver shall not be construed as a waiver of any other default concerning the same or any other agreement provision, charge, or payment of principal amount owing to LAFCo.

**9. AUTHORITY TO SIGN**

The party executing this agreement on behalf of Applicant personally warrants that they have full authority to enter into this agreement on behalf of the Applicant for which they are signing, and that said entity will be legally bound to the agreement by their signature hereto. In the event that such authority does not exist, the individual who has signed this agreement agrees that he or she shall be personally liable for the charges.

Executed at Ukiah, California, on August 6, 2020.

**APPLICANT**

**REAL PARTY IN INTEREST**  
(If different from Applicant)

Signature: 

Signature: \_\_\_\_\_

Title: City Manager, City of Ukiah

Title: \_\_\_\_\_

# EXHIBIT L

April 20, 2021



Honorable Members of the  
Mendocino Local Agency Formation Commission

Uma Hinman, Executive Officer  
Mendocino LAFCo  
200 South School Street, Suite F  
Ukiah, CA 95482  
Sent via email: [eo@mendolafco.org](mailto:eo@mendolafco.org)

Subject: City of Ukiah Application to Detach the Ukiah Valley Sanitation District – Metes and Bounds Provided

Dear Ms. Hinman,

I hope this finds you well.

Attached please find a copy of the metes and bounds description to support the City's application to detach the Ukiah Valley Sanitation District.

The law and LAFCo's Justification of Proposal form require that an applicant provide LAFCo with a copy of a metes and bounds description of the area affected by a proposed change. The City has gone through significant expense and effort to provide you with the attached metes and bounds and is very pleased to provide you with the attached copies. I note the Justification of Proposal form asks for three copies – I would be happy to provide hard copies if you require them in addition to the attached documents. Please let me know.

Additionally, on February 25, 2021, City and LAFCo staff had a call at the City's request to discuss the status of the City's application to detach the UVSD. On that call we discussed three persistent issues, which, in no particular order, were:

- LAFCo's position that the City needs to provide a certified copy of a new City Council Resolution of Application.
- The Detachment's exemption from CEQA and LAFCo's role as a responsible agency.
- LAFCo's position that no action could be taken on any change in organization for the City until the City's Sphere of Influence had been updated.

On April 19, 2021, the City received a letter from you offering a forum for the discussion of these issues before the Commission. As you note in your April 19<sup>th</sup> letter, the City disagrees with LAFCo staff on these three issues. We appreciate this approach and welcome the opportunity to discuss these issues with the Commission.

In an effort to be clear and consistent: by providing LAFCo staff with a copy of the attached metes and bounds description, the City of Ukiah believes its application to detach the Sanitation District is complete and that LAFCo has what it needs to initiate the tax sharing process as provided for in Revenue and Taxation Code section 99.

Thank you for your consideration.

Sincerely,



Philip A. Williams  
Special Counsel, City of Ukiah

Cc: Sage Sangiacomo, Ukiah City Manager  
Andrea Matarazzo, Special CEQA Counsel  
Michael Colantuono, Special LAFCo Counsel