

# EXHIBIT 3

## TIME FOR CHANGE:

### A Report on the Relationship Between the Ukiah Valley Sanitation District and the City of Ukiah Sewer System

May 21, 2009

#### **Summary**

The City of Ukiah (the City) and the Ukiah Valley Sanitation District (the District) are jointly responsible for providing sewer services to the Ukiah Valley area. Complaints and allegations of financial wrong-doing on the part of the City of Ukiah as a joint service provider with the Ukiah Valley Sanitation District led the 2008-09 Grand Jury to investigate the history and relationship between the City and the District.

Jurors found no evidence to support allegations of improper financial manipulation. The investigation did reveal a lack of transparency on the part of the City and mistrust by the District. The investigation also identified examples of inadequate accounting procedures for cost allocation, poor or non-existent communication between the two parties, and inadequate long-term planning.

The necessity to build an updated and expanded wastewater collection and treatment plant has resulted in financial commitments that bind the City and the District with shared payments averaging \$4.9 million annually until 2036.

This indebtedness has exacerbated tensions between the City and the District. It has brought into question accounting procedures that fail to track accurate data on water and sewer system maintenance costs within the City, including allocation of depreciation of equipment. The current accounting system does not detail operating and maintenance costs specifically attributable to the District.

The City Council and District Board have not always engaged in regular, effective communication. In the absence of long-range planning, they were largely reactive in actions taken regarding major maintenance and capital improvements, new sewer services, project planning and annexations.

In December 2008, the District changed from a *dependent* to an *independent district* as defined by Special District law. The composition of the board changed from having three appointed members to having five members elected from among residents of the District. As a *single purpose, enterprise district*, the District is dependent on service fees and tax revenues to meet capital and operating needs and is required to complete annual audits.

The new board is somewhat limited in their actions and decision making processes due to provisions of the existing Participation Agreement and Financing Agreement for the Treatment Plant Upgrade and Expansion Project.

## ***Background***

The City of Ukiah has owned and operated its wastewater collection and treatment system since the late 1880s.

In the mid 1950s, due to more stringent state and federal public health mandates and a home construction boom in and around the City of Ukiah, the City chose to abandon its old and failing sewer plant on East Gobbi Street near the river, now known as Riverside Park.

The City acquired property south of the City, northeast from the intersection of Boonville Road and South State Street, and planned for the construction of a new plant. The new plant was completed and placed in service in 1959.

The location of the new facility provided an opportunity for use by areas outside the City service area. At that time those areas were served by private disposal systems, except for the Ukiah Village subdivision. That development had built its own small disposal plant located on the northwest corner of Laws Avenue and South State Street. The small privately owned and operated treatment facility was failing and was a constant source of complaints to the County.

In answer to recurring complaints from residents just outside the City limits, the County Board of Supervisors (BOS) created the Ukiah Valley Sanitation District and established its boundaries. Except for annexations, some of which were non-contiguous, the boundaries have remained essentially the same.

Rather than constructing a separate wastewater treatment facility, the newly formed District joined with the City to provide sewer services for the Ukiah Valley area.

## ***Methods***

The Grand Jury interviewed past members of the District board and present employees of the City as well as interested community members, attended meetings of the City Council and the District, reviewed resolutions, indices of relevant ordinances, agendas and minutes of the District, Ukiah City Council and the Joint Ad Hoc committee of the City and District, and other documents.

## ***Findings***

1. On July 6, 1954, the Board of Supervisors created the Ukiah Valley Sanitation District. The District was to be governed by two Mendocino County Supervisors and one Ukiah City Council Member, all appointed by their respective governing bodies.
2. Negotiations between the City and the District resulted in an agreement to allow the City treatment plant to be used by the District. The agreement called for the City to construct the treatment facility and the District to pay for

costs to install the necessary north-south pipelines (trunk sewer) to transport the waste to the plant. The work on both projects was completed in 1959.

3. A District bond issue was passed to pay for sewer lines into some of the formerly unserved areas. Some areas within the District, such as Fireside Village, chose to opt out of being included in the sewer service area.
4. The District chose not to set up its own operations for such tasks as maintenance, billing and collections but rather negotiated with the City to provide the following services:
  - Treating wastewater generated within the District at the City-owned wastewater treatment facility
  - Operation and maintenance of its sewer collection system in accordance with District ordinances, policies, procedures and industry standards
  - Meeting all required Federal and State regulations
  - Performing minor engineering and construction projects within the District
  - Billing and collection of monthly user fees
  - Receiving fees and charges and for making inspections of new connections
  - Maintaining financial records and performing transactions relative to certain District revenue and expenditure accounts
5. On July 19, 1995, the City of Ukiah and the District entered into a new Participation Agreement for the operation of joint sewer facilities. The agreement was modified three times: March 24, 1999, December 15, 2004, and March 2, 2006. The following are key elements of the Agreement, as modified:
  - a. The City shall operate, maintain and repair the District's collection system, in accordance with the District rules, regulations and ordinances.
  - b. The City and District are prohibited from contracting for sewage treatment outside the District boundaries without the consent of both parties.
  - c. New connections may only be made at points that are mutually agreeable to the City and District.
  - d. Costs of treatment shall be apportioned annually based on the ratio, as of each March 31, of the number of equivalent sewer service units (ESSUs) of each jurisdiction. An ESSU is a unit calculated as discharge from a typical single family residential unit.
  - e. The City shall be the paying and receiving agent for all District and City maintenance and operation funds.
  - f. The City shall comply with specified insurance requirements.
  - g. The City shall maintain complete records and accounts related to costs and expenditures and all sewer revenues collected.
  - h. The City shall retain title, management responsibility and control of the sewer treatment plant including additions or changes. City personnel shall maintain, operate and control the treatment plant and also service and maintain all trunk and collection lines.
  - i. The District shall establish ordinances, resolutions, rules and regulations for administration of the District's system.

- j. The District shall set connection, service, permit and inspection fees and capacity charges. Fees shall be sufficient to reimburse the City in amounts calculated by the City.
  - k. The original Agreement specifies a 30-year term, to July 2025, with an option for either partner to cancel upon 5 years advance written notice. However, the financing agreement includes an extension to 2036, the final maturity of the Association of Bay Area Governments (ABAG) bonds. It precludes cancellation or termination of the Agreement unless the District enters into a substantially identical agreement with ABAG or prepays all future allocated debt service to the City.
  - l. The total annual debt service due from the City and District on the revenue bonds for expansion and upgrading of the plant averages \$4.9 million through 2036.
  - m. The District Board of Directors and the City Council are required to meet at least once a year.
6. The Agreement clearly calls for the City and the District sewer systems to be operated and maintained as a single enterprise system with operating costs apportioned to the City and the District based on the ratio of City/District ESSUs.
  7. The City must constantly be in a planning mode in order to meet current and anticipated state and federal regulations and to secure the required five-year renewals of their National Pollutant Discharge Elimination System (NPDES) permit.
  8. In the late 1990s the City and District agreed that the plant needed more capacity to accommodate projected development over the next 15 to 20 years. The City and District planned for a reasonable expansion of ESSUs, taking into account the limited ability of the current ratepayers to repay the associated debt.
  9. A preliminary study of the plant was completed by Kennedy /Jenks Engineering Consultants in 2000. The study considered current plant treatment capacity and provided the City and the District with an independent evaluation of future capacity needs and estimated costs.
  10. On May 23, 2001 results of the Kennedy/Jenks study were presented to the District Board. A similar briefing was made to the City Council the previous month. Minutes indicate that both entities recognized the need to proceed with final planning for a plant upgrade and expansion project.
  11. At the July 24, 2002 meeting action was taken to adopt a 50/50 cost sharing between the City and District for engineering expenses associated with the City of Ukiah Wastewater Treatment Plant project.
  12. After a formal request for proposal (RFP) process seeking preliminary design and cost estimates, Brown and Caldwell, Consulting Engineers was selected by the City with District concurrence.
  13. Brown and Caldwell's estimated costs for the upgrade and expansion substantially exceeded previous estimates presented in the 2000 Kennedy/Jenks report.
  14. In response to concerns about the cost of the plant project, the City and District authorized a "value engineering" study to examine various aspects of

- Brown and Caldwell's preliminary design and to make recommendations for appropriate cost-cutting measures that would not affect overall upgrading and expansion goals.
15. This study delayed the project for six months. During the delay, construction costs increased considerably.
  16. The financial consulting firm, Bartle Wells was hired to provide an initial analysis and recommendation for financing the cost obligations based on the preliminary engineering estimates by Brown and Caldwell. A follow-up analysis was made after the low bid was received.
  17. Bartle Wells recommended that costs for the expanded capacity of the plant be met by adjusting fees and charges on new hookups in the City and District.
  18. Bartle Wells also recommended that the current and future users in the City and District pay for the plant upgrade portion of the project through a series of five rate increases on the monthly sewer service charges.
  19. On November 2, 2005, the District and the City separately adopted identical sewer service fee schedules for the five fiscal years allowing annual adjustments through June 30, 2010. Approval proceedings were conducted in compliance with Proposition 218 (Articles XIII C and XIII D of the State constitution) calling for public notice and majority protest hearings for service based user fees. This obviated the need for electoral approval of tax increases. The final rate increase is scheduled to be implemented on July 1, 2009 and to remain in effect through June 30, 2010.
  20. The City and District entered into an agreement on March 2, 2006 to secure financing for the plant project and establish the procedure for the District to pay its share of the installment payments.
  21. The City has the primary obligation for repayment of the \$75,060,000 in revenue bonds issued by the Association of Bay Area Governments (ABAG) for the project. Upgrades and rehabilitation costs are to be paid on the same basis as operating costs. This basis is the number of ESSUs billed to each entity and annually adjusted according to the ratio of existing ESSUs. Expansion of the capacity is to be paid by the potential additional ESSUs allocated to each entity and the loan interest charges are to be paid by the new hook-ups.
  22. More of the additional hookups were allocated to the District because more growth was projected outside the City limits. This obligated the District to a greater share of the long-term financial obligation.
  23. Both the City and the District initially approved the Wastewater Treatment Plant upgrading and expansion project and authorization was given to City staff to proceed with a call for construction bids. The Kiewit Pacific Company bid was accepted and the contract was awarded on October 17, 2005.
  24. Completion of the multi-year plant project is anticipated by June 2009, ahead of schedule and under budget.
  25. Former members of the District Board have reported a "lack of communication or transparency" and not consistently receiving timely information from City staff and City administration. This situation is alleged to

- have occurred mostly leading up to the current plant project and following the implementation of the 1995 Participation Agreement.
26. In recent years the District has sought increasingly detailed information from the City.
  27. City staff members have acknowledged past shortfalls in providing information to the District and are considering a new accounting system that might improve responsiveness. Some argue that the City is not sufficiently staffed to provide all the information that the District may desire and that more detailed accounting would not be cost-effective in terms of ratepayer benefits.
  28. Recorded minutes show that District meetings were held sporadically during the planning and formative phases of the plant project. For example, only three District Board meetings were held in 2000, two of which were related to consideration and adoption of the annual budget.
  29. Despite a lack of involvement in the planning process, recorded minutes indicate that from mid-2002, the Board *did* become more vigilant and ultimately concurred with all plant project decisions and participated in public hearings for establishing the new user rates and new connection fees.
  30. The City maintains accounting records on the basis of a single unified sewer enterprise fund. Financial statements are audited annually by independent certified public accountants as part of the normal audit requirement. The City's audit reports have been timely and contain "clean audit" opinion letters.
  31. The Participation Agreement requires the City "...to maintain complete records and accounts..." but it does not appear to require the City to differentiate City and District financial information. Until recently, there have not been separate audit reports for the District. This practice has been publicly criticized.
  32. In 2007 an audit firm, other than the City's, was engaged to examine the District books for the period 2001 through 2005. The auditors reported that because the City did not allocate costs between the District and City, available data were inadequate to support an independent audit report for the District. However, the firm subsequently completed an audit for 2006-07 that was accepted by the District Board and forwarded to the State.
  33. Budgets proposed by the City and approved by the District have regularly included more approved major maintenance projects than were achievable with the available level of funding and staff.
  34. Mutual disrespect and a lack of cooperation have developed between some representatives of the City and the District.
  35. In May 2008, the District established a part-time District Manager Position.
  36. In November 2008, the District changed from a *dependent* to an *independent district*.<sup>1</sup> The composition of the board changed from having three appointed members to having five elected members who reside in the District. The five-member board took office in December 2008.

---

<sup>1</sup> Dependent districts are governed in full by individuals appointed by other existing legislative bodies like a city council or board of supervisors. Independent districts are governed by a board of directors elected directly by the district's voters or appointed to a fixed term of office by another legislative body such as a board of supervisors.

37. As an *independent single purpose, enterprise district*, the District is dependent on service fees and tax revenues to meet capital and operating needs. As an independent district, it is required to perform an outside audit annually unless the board and board of supervisors approve biannual audits.
38. The first amendment to the Agreement requires joint approval of the annual combined sewer budget (Account 612).
39. The current plant expansion project provides for 2,400 additional ESSUs and allocates 1560 (65%) to the District and 840 (35%) to the City.
40. Because some of the District service area lies within the City limits, it is conceivable that some of the District's ESSUs could be used on City authorized projects in this *overlap area*.
41. Approximately one-half of the District's sewer accounts for domestic and commercial sewer billings lie within the City limits, in the *overlap area*.
42. The City maintains separate revenue accounts for domestic and commercial sewer billings for the City and the District.
43. As an independent *special district*, the District may:
  - procure services
  - enter into contracts and agreements
  - incur debt
  - employ personnel
  - adopt resolutions and ordinances
  - initiate and approve annexations
  - approve and construct sewer extensions and new connections
  - establish user rates, fees and charges in accordance with existing agreements with the City. The District is obligated to budget and fund such activities from sources outside of Operating and Maintenance account 612.
44. Account 612 fund balances found to be in excess of annual operating and maintenance needs are accumulated in the sewer enterprise fund and are available for budgeting in future years.
45. The City currently estimates system maintenance and repair costs rather than tracking actual data to allocate these expenses.
46. In some instances, work crews and vehicles or other major equipment or machinery that are paid for and maintained partially or wholly with merged funds are used by other City Departments.
47. The District and City have not engaged in adequate joint long-range planning. They have been largely reactive in actions taken regarding major maintenance and capital improvements, new sewer services, project planning and annexations.
48. Many of the findings cited in this report should be addressed in the City's Sanitary Sewer Management Plan (SSMP) and the Municipal Service Review currently underway by the Local Area Formation Commission (LAFCO).<sup>2</sup>

---

<sup>2</sup> Additional information may be found on the LAFCO website at [www.mendolafco.org](http://www.mendolafco.org)



49. On August 14, 2008, a joint Ad Hoc committee of the City and the District published a report including nineteen recommendations for amendments to the Participation Agreement.<sup>3</sup>

***The Grand Jury recommends that:***

1. the City Council and District Board hold joint briefings at the earliest stages of planning and discussion for National Pollutant Discharge Elimination System (NPDES) permit renewal and/or consideration of plant upgrading or expansion, and that they continue joint briefings throughout any subsequent project. (Findings 7, 10, 14, 28-29, 47)
2. the City Council and District Board schedule periodic orientation workshops for City Council and District Board Members to ensure that all members understand their shared responsibility for providing sewer service in the Ukiah Valley. (Findings 34-36)
3. the City Council and District Board secure input from Mendocino County, LAFCO and other planning bodies and review all available area-wide planning documents prior to making decisions about future expansion and ESSU determinations. (Findings 22, 48)
4. the City Council and District Board base final determination of future plant expansion on a detailed financial study that addresses the potential economic impacts on current and future users, strategies for dealing with changing economic conditions, and the ability of City and District ratepayers to meet current and future indebtedness. (Findings 5-6, 40, 47)
5. the City and District maintain a central list of prioritized projects but that they only include in annual budgets items for which funds and staffing have been identified. (Finding 33)
6. the City Staff provide the City Council and District Board with monthly reports including but not limited to:
  - revenue and expenditures (Account 612) with comparisons with the budget
  - summaries of new connections
  - field maintenance and inspection activities
  - overflows and/or treatment plant process malfunctions, if any, actions taken and any fines incurred.(Findings 25-27, 30)

---

<sup>3</sup> The report of the Ad Hoc committee is available on the Grand Jury website as a backup document to this report [www.co.mendocino.ca.us/grandjury](http://www.co.mendocino.ca.us/grandjury)

7. the City Staff, City Council and the District Board and Manager regularly exchange information, as needed, including:
  - updates on major projects
  - inquiries regarding new connections
  - status of pending projects and/or planning activities in each entity
  - relevant information such as complaints, inspections by regulatory agencies, etc. during the past month. (Findings 25-28)
8. any actions or services requested of the City (by the District) beyond the existing Agreement be documented in supplemental agreements that are negotiated, budgeted and funded by the District independently of the restricted Operating and Maintenance (O&M) funds in Account 612. (Findings 4-5, 49)
9. any expense for a purpose specifically benefiting one entity, and not of value to the other, be separately budgeted and funded. (Findings 34, 44, 46)
10. the City develop accounting procedures to accurately allocate costs, including the full cost of equipment used for maintenance of City water, City sewer, District sewer, and for use by other City Departments in a manner that will permit monthly expense reports for each entity. (Findings 5, 37)
11. the City Council and District Board conduct a joint mid-year sewer budget hearing no later than January 31 each year to compare actual revenue and expenditures with budget estimates, review the status of budgeted activities and consider maintenance and capital improvement goals. (Findings 4-5, 45-47)
12. the City and District notify and keep each other fully informed of all activities that might directly or indirectly impact the other such as planning for boundary changes, annexation of new areas, proposed subdivisions, collection system extensions, new connections, major maintenance projects, "will serve" commitments, permits for pre-treatment facilities, or any legal or financial issues. (Findings 38, 43)
13. the City and District adopt similar, if not identical policies, procedures, standards for construction, user rates, and miscellaneous fees and charges wherever possible. (Findings 5-6, 19)
14. the City, while exercising its obligations of the Participation Agreement and amendments thereto retain sole authority, discretion and responsibility for selection and employment of administrative, operating and maintenance personnel for the unified City/District system along with the right to establish appropriate pay schedules. (Finding 5)

15. the District, apart from its contractual relationship with the City under existing Agreements, retain its identity, and continue exercising power and discretion as an *independent special district*. (Findings 37, 43)
16. the City employ only appropriately certified operating and maintenance personnel including those in direct supervisory or administrative positions in the sewer division of the City's Public Works Department. (Findings 5, 7)
17. the City and District hold joint planning and budget review sessions on a quarterly basis as a minimum and more often as needed. (Findings 28, 29, 34, 38-40)
18. the District continue to hold regular monthly meeting dates and special meetings as needed. (Finding 28)
19. the City and District re-visit the Participation Agreement and subsequent amendments, review their respective needs for efficient, cost-effective and transparent operations and make revisions, as required, to ensure transparency and a unified approach for providing sewer service. (Findings 4-5, 49)

### ***Discussion***

The Grand Jury found no evidence of wrong-doing but did find that the City's records of sewer and water related expenses do not break out operating costs specifically attributable to the Ukiah Valley Sanitation District. While doing so would be costly, it could be a valuable step toward transparency and a more trusting working relationship.

A lack of frequent, effective communication and adequate long-range planning has resulted in the District and City being largely reactive in actions taken regarding new sewer services, project planning and annexations.

Improving communication and planning will become increasingly important in view of the need to reclaim and reuse water more effectively and minimize further financial burdens on ratepayers.

The findings illustrate the complex structure through which the City and District provide sewer service to the Ukiah Valley. Each entity has a long-term financial obligation to work together. The City and District are encouraged to review their respective needs for efficient, cost-effective and transparent operations and adopt a unified approach for providing sewer service.

***Required Responses***

City Manager, City of Ukiah (All Findings; All Recommendations)

Ukiah City Council (All Findings; All Recommendations)

Ukiah Valley Sanitation District Board of Directors (All Findings; All Recommendations)

Ukiah Valley Sanitation District Manager (All Findings; All Recommendations)

Director, Local Area Formation Commission (LAFCO) (Findings 37, 43, 48 and Recommendation 3)

# EXHIBIT 4

CITY OF UKIAH AND UVSD  
 ESSU STATISTICS REPORT  
 APRIL 1, 2018  
 04/01/2017 - 03/31/2018

	City Accounts # ESSU Units	UVSD #ESSU Units	Total All Acct. #ESSU Units
Report March 2018	6414.15	5808.49	12222.64
March 2017 % of Total	52.48%	47.52%	100.00%
Percent Use to Date March 2018	73.59%	65.32%	68.21%
New Plant 20 Year Net ESSU Used	618.13	1018.97	1637.1
New Plant Total ESSU's Remaining To Date	221.87	541.03	762.9
New Plant Agreement	35.00%	65.00%	100.00%
New Plant Capacity	840	1560	2400

# EXHIBIT 5

DUNCAN M. JAMES  
DONALD J. McMULLEN  
K. J. FLAVETTA  
DOUGLAS L. LOSAK

**LAW OFFICE OF DUNCAN M. JAMES**

LAMBS INN  
P. O. BOX 1381  
445 NORTH STATE STREET  
UKIAH, CALIFORNIA 95482  
(707) 468-9271

FAX (707) 468-0453  
lawoffice@duncanjames.com

November 7, 2018

Dave Rapport  
CITY of Ukiah Attorney  
405 W. Perkins Street  
Ukiah, CA 95482

Re: *ESSU Calculation and Operating Agreement*

Mr. Rapport:

DISTRICT'S bond counsel has indicated a concern that the Operating Agreement states there is a dispute about how many ESSUS each party has used and how many ESSUS are left. The operative words "are left" seem to be most important since that obviously would impact debt service. They have asked for detail on that issue and a projection as to when the dispute can be resolved. In addition, under the new Operating Agreement we need to resolve the ESSU issue within six (6) months of the execution of said agreement.

I do not mean this letter to be confrontational. It is meant to only set forth the DISTRICT's understanding, or lack thereof, of the number of equivalent sewer service units (ESSUS) being used by the CITY and DISTRICT. Our two agencies need to work together in a collaborative effort and this seems to be a good starting point.

In addition to the above reasons that this issue needs to be addressed sooner rather than later, the developer for Vineyard Crossing has requested a will serve letter for approximately 120 ESSUS. The DISTRICT'S problem with issuing such a letter is the fact that over the past fifteen (15) years the growth in the number of ESSUS has been erratic and does not match what is reflected on the building permits.

Historically, the CITY records have bounced all over the place, as more particularly set forth in the attached Exhibit A. I have selected March 31, 1995, as the beginning point of this discussion and Exhibit A, since according to the Agreement signed on January 23, 1985, ESSU calculations were to be based on "the ratio of CITY-DISTRICT equivalent sewer service units on record as of March 31 each year"; and, March 31, 1995 is the last annual calculation of ESSUS pursuant to the 1985 Agreement prior to the signing of the Participation Agreement on July 10, 1995. Briefly, here are some of the problems that exist from the date of the execution of the PARTICIPATION AGREEMENT on July 19, 1995, and the execution of AMENDMENT #1 thereto on March 24, 1999:



1. On March 31, 1995. There were 10,932 ESSUS (UVSD 6934);
2. On March 31, 1996 there was an increase of 380 ESSUS to 11,312 ESSUS (UVSD 7135);
3. On March 31, 1997, there was a decrease of 219 ESSUS to 11,093 ESSUS (UVSD 7330);
4. On March 31, 1998, there was an increase of 225 ESSUS to 11,318 ESSUS (UVSD 7329);
5. On March 31, 1999, there was a decrease, of 544 ESSUS to 10,774 ESSUS (UK#5 2325).

The March 31, 1999 calculation of 10,774 ESSUS (UK#5 2325) is 158 ESSUS less than the March 31, 1995 calculation of 10,932 ESSUS (UVSD 6934). Where did the 158 ESSUS go since ESSUS, in essence, are attached to the land and never disappear?

The pattern doesn't change with the signing of the 1999 AGREEMENT on March 24, 1999.

1. On March 31, 2000, there was an increase of 368 ESSUS to 11,142 ESSUS (UK#5 2326); and,
2. On March 31, 2001, there is a decrease of 135 ESSUS to 11,007 ESSUS (UVSD 7434).

So, from March 31, 1995 to March 31, 2001, there is a net increase of 75 ESSUS from 10,932 ESSUS (UVSD 6934) to 11,007 ESSUS (UVSD 7434).

If we skip both 2002 and 2003, because it is anybody's guess which 2002 ESSU numbers (11,607 ESSUS or 13,211 ESSUS) and 2003 ESSU numbers (11,498 ESSUS or 11,595 ESSUS) are correct and using March 31, 2001 as the starting point:

#### **CHEMICALLY ENHANCED PRIMARY TREATMENT (CEPT)**

AMENDMENT # 2 to the PARTICIPATION AGREEMENT was signed on December 15, 2004. It provided that:

“Using pre-treatment methods recommended by Brown and Caldwell, Environmental Engineers and Consultants, on an interim basis only, the City has increased the treatment capacity of its sewage treatment plant by a total of 1388 Equivalent Sewer Service Units ("ESSUs") [...]” (AMENDMENT # 2, pages 1-2 , para. 5); AND,

“The Parties estimate that upon its completion, the Capacity Project will increase the wastewater treatment plant's capacity by an additional 2400 ESSU's ("Increased Capacity"), including the number made available temporarily as described in Recital. Number 5, above.” (AMENDMENT # 2, page 2, para. 8.)

The agreement then provides in part:

“The ESSU's made available through the use of the pre-treatment process recommended by Brown and Caldwell shall be allocated as follows: 938 to the District; 442 to the City.” (AMENDMENT # 2, page 2, para.1.1.)

“The Increased Capacity shall be allocated as follows: 65% to the District; 35% to the City.” (AMENDMENT # 2, page 3, para.1.2.)

It is important to note that “increased capacity” is a defined term and represents an additional 2400 ESSUS. Therefore, if increased capacity is 2400 ESSUS, the DISTRICTS proportionate share pursuant to AMENDMENT # 2, page 3, para. 1.2, is 1560 ESSUS (2400 x 65% = 1560 ESSUS)

At the time of the creation of the CEPT program the WWTP capacity was 9,800 ESSU'S, which had been reached (See SEWER CONECTION FEE STUDY dated December 21, 2010 (UVSD 17525):

“Post construction plant capacity is the sum of the added new connections of 2400 and the pre-project maximum capacity of 9,800 or 12,200 ESSU's; it is to be noted that these figures differ substantially from those provided in the ESSU Statistics Reports (see Appendix D).” (UVSD 16550)

“Prior to the implementation of CEPT, the process capacity at the WWTP has been reached. This means that until the Capacity and Rehabilitation WWTP Project is completed, the City must limit new connections to 920 ESSUs in order to remain in compliance with the Waste Discharge Permit requirements. As of March 24, 2004, 484 ESSUs of the 920 additional ESSUs have been committed to since August of 2003 either through the permit process or by Will Serve Letters issued for proposed subdivisions or large developments.” (Emphasis added.) (UVSD 7918).

CEPT ESSUS were not separately identified until a “Wastewater Treatment Plant Improvement Project Plant Optimization Update” report by the CITY dated December 10, 2003 (UVSD 7759) identified 186 CEPT ESSUS (UVSD 7762).

Although there has been much said about whether a CEPT ESSU is based on 210 gallons per person per day or some other figure, the same report should put that discussion to rest:

“According to the 2000 U.S. Census, there are 2.47 persons per household in Ukiah and 2.53 persons per household in Mendocino County. Assuming approximately 2.5 persons per household and 100 gallons per day of wastewater is generated per person (typical value), then each household or connection would need 250 gallons per day of treatment capacity. Dividing 230,000 gallons per day of CEPT generated capacity by the 250 gallons per day of treatment capacity needed per connection, results in the total number of additional connections of 920.” (UVSD 7762)

As stated above, on March 31, 2002 and March 31, 2003 there were duplicate reports for the same year with different numbers. Therefore, from March 31, 2001 to March 31, 2004, there was an increase of 1,042 ESSUS from 11,007 ESSUS (UVSD 7434) to 12,044 ESSUS (UVSD 17511).

The first CEPT numbers were reported on December 10, 2003 as 186 CEPT ESSUS which include 78 ESSUS for Vichy Springs. According to the “City of Ukiah Plant Optimization Update” dated December 10, 2003 (UVSD 7762),

“The Vichy Springs development project in the District, which does require a main extension, is estimated to need 78 connections. Subtracting these connections from the additional 920 connections resulting from CEPT would leave 734 or approximately 750 connections available until the plant improvement project is completed.” (UVSD 7763. Underline emphasis added.)

Five (5) weeks later in an UVSD Agenda Summary Report dated January 28, 2004, it was reported there were 444 CEPT ESSUS that have been committed (UVSD 7830). On March 31, 2004, there are 12,044 ESSUS (UVSD 17511) and the WWTP was only 156 ESSUS under capacity of 12,200 ESSUS (UVSD 16550) which included 484 CEPT ESSUS (UVSD 7918).

“As of March 24, 2004, 484 ESSUs of the 920 additional ESSUs have been committed to since August of 2003 either through the permit process or by Will Serve Letters issued for proposed subdivisions or large developments. Of the committed 484 ESSUs, 385 ESSUs have originated within the Ukiah Valley Sanitation District and 99 have originated within the City. The percentages of the current ESSU allocations are 80% for the District and 20% for the City.” (Emphasis added.) (UVSD 7918)

Two important facts are included in that quote. First, the statement there are 484 CEPT ESSUS “have been committed to since August of 2003 [...]”; and, second, the CITY is counting ESSUS identified in “will serve” letters.

The ESSU and CEPT ESSU calculations are called into serious question when you begin comparing them on a year to year basis. CEPT ESSUS AND BUILDING PERMIT ESSUS should be identical and whatever that number is should be reflected as the increase or decrease in the ESSUS. It doesn't happen. Here is a summary of what occurs from 2005 through 2010 when there was no further need to keep CEPT ESSUS separate since the work on the WWTP had been completed

1. On March 31, 2005, there is a decrease of 377 ESSUS from 12,044 ESSUS (UVSD 17511) to 11,667 ESSUS (UVSD 17513) but an increase in 42.09 CEPT ESSUS on March 23, 2005 to 526.09 CEPT ESSUS (UVSD 8310).
2. On March 31, 2006, there is an increase of 2,752 ESSUS to 14,419 ESSUS (UK#13, 2334) which includes an increase of 85.98 CEPT ESSUS to 612.07 CEPT ESSUS on April 19, 2006 (UVSD 9007) and 109.68 BUILDING PERMIT ESSUS, based on an April 1<sup>st</sup> to March 31<sup>st</sup> calendar.
3. On March 31, 2007, there is an decrease of 2,548 ESSUS to 11,871 ESSUS (UK#13, 2332) which includes an increase of 63.92 CEPT ESSUS to 675.99 CEPT ESSUS on April 23, 2007 (UVSD 10242) and 88.36 BUILDING PERMIT ESSUS, based on an April 1<sup>st</sup> to March 31<sup>st</sup> calendar.
4. On March 31, 2008, there is an increase of 11.86 ESSUS to 11,882.86 ESSUS (UK#13, 2334) which includes an increase of 63.92 CEPT ESSUS to 695.86 CEPT ESSUS on April 15, 2007 (UVSD 22299) and 18.87 BUILDING PERMIT ESSUS, based on an April 1<sup>st</sup> to March 31<sup>st</sup> calendar.
5. On March 31, 2009, there is an increase of 11.93 ESSUS to 11,894.79 ESSUS (PRA#13 2335) which includes an increase of 256.25 CEPT ESSUS to 952.67 CEPT ESSUS on April 9, 2007 (UVSD 23774) and 13.39 BUILDING PERMIT ESSUS, based on an April 1<sup>st</sup> to March 31<sup>st</sup> calendar.
6. On March 31, 2010, there is an increase of 16.2 ESSUS to 11,910.99 ESSUS (ES 0011) which includes an increase of 153.42 CEPT ESSUS to 1,105.53 CEPT ESSUS on April 9, 2007 (UVSD 18813) and 19.86 BUILDING PERMIT ESSUS, based on an April 1<sup>st</sup> to March 31<sup>st</sup> calendar

## CONCLUSION

When the first CEPT ESSU numbers were published in 2004 it was reported there were 186 CEPT ESSUS on December 10, 2003 (UVSD 7762). The last Sewer Statistics report prior to that date was on March 31, 2003 and was reported there were either 11,498 ESSUS or 11,595 ESSUS (UVSD 16582), depending on which report you select, which grew to 12,044 ESSUS by March 31, 2004. (UVSD 17511). If we assume the 1,637.10 CEPT ESSU calculation is correct and using the March 31, 2003 Sewer Statistics Report listing 11,595 ESSUS, then on the March

David Rapport  
Page 6  
November 7, 2018

31, 2018 the total number of ESSUS should have been 13,232.1 ESSUS. That would mean the WWTP is 1,032.1 ESSUS over capacity; neither the CITY or DISTRICT should issue any new building permits; and why we are so concerned about issuing "will serve" letters.

The combination of those numbers are the problem in a nutshell. I have attached a chart which breaks everything down by year which may be better to quickly review.

As I said in the beginning, I do not mean this letter to be confrontational or accusatory. This letter is only meant to explain the issues the DISTRICT needs to address. We must join together under the Operating Agreement and solve the problem and reach a consensus so we can move forward.

Very truly yours,

DUNCAN M. JAMES

Cc: Ernie Wipf  
Theresa McMichael  
Mark DeMeulenaere

**EXHIBIT A**

Date	Bates	DISTRICT	CITY	TOTAL	<sup>1</sup> CEPT	<sup>2</sup> Bldg. Permits
1995-03-31	UVSD 6934	4,724	6,208	10,932		
1996-03-31	UVSD 7135	5,030	6,282	11,312		
1997-03-31	UVSD 7330	4,833	6,260	11,093		
1998-03-31	UVSD 7329	4,970	6,348	11,318		
1999-03-31	UK#5 2325	4,580	6,194	10,774		
2000-03-31	UK#5 2326	4,833	6,309	11,142		
2001-03-31	UVSD 7434	4,857	6,151	11,007		
2002-03-31	UK#5 2327*	5,130	6,477	11,607		
2002-03-31	UVSD 16581*	5,184	8,027	13,211		
2003-03-31	UK#5 2328**	5,070	6,427	11,498		
2003-03-31	UVSD 16582**	5,167	6,427	11,595		
2003-03-10	UVSD 7763 <sup>3</sup>	CEPT 78	CEPT 108	CEPT 186	186 <sup>4</sup>	
2004-03-31	UVSD 17511	5,440	6,603[sic]	12,044		
2004-04-07	UVSD 7918	CEPT 385	CEPT 99	CEPT 484	+298	
2005-03-23	UVSD 8310 <sup>5</sup>	CEPT 399.68	CEPT 126.41	CEPT 526.09	+42.09	
2005-03-31	UVSD 17513	5,498	6,169	11,667 <sup>6</sup>		
2005-03-31	UK#11 0002	BLDG.P 86.16	BLDG.P 23.52	BLDG.P 109.68		109.68 <sup>7</sup>
2006-03-26	UVSD 10051	CEPT 467.02	CEPT 208.16	CEPT 675.18	+149.18	
2006-03-31	UK#5 2334 [sic]	6,342	8,077	14,419		
2006-03-31	UK#11 0003	BLDG.P 45.10	BLDG.P 43.26	BLDG.P 88.36		198.04
2007-03-31	UK#5 2332	5,634	6,237	11,871		
2007-04-23	UVSD 10242	CEPT 467.83	CEPT 208.16	CEPT 675.99	.81	
2007-03-31	UK#11 0003	BLDG.P 11.80	BLDG.P 6.07	BLDG.P 17.87		215.91
2008-03-31	UK#5 2334	5,641.30	6,241.56	11,882.86		
2008-04-15	UVSD 22299	CEPT 480.99	CEPT 214.87	CEPT 695.86	+19.87	
2008-03-31	UK#11 0004	BLDG.P 6.41	BLDG.P 6.78	BLDG.P 13.19		229.1
2009-03-31	PRA#5 2335	5,644.40	6,250.39	11,894.79		

<sup>1</sup> Increase or decrease in CEPT ESSUS since previous reporting date.

<sup>2</sup> Cumulative increase in building permits since last report date.

<sup>3</sup> City of Ukiah Plant Optimization Update, 2003-12-10 (UVSD7762-3): "Ordinances for the City of Ukiah (City) and the Ukiah Valley Sanitation District (District) became effective on February 15, 2003 that placed a hold on new sewer connections of more than 5 units in [7763] size and that required the extension of a sewer main. The number of connections needed for construction projects in the City currently in progress and not affected by the ordinance is estimated to be 108. The Vichy Springs development project in the District, which does require a main extension, is estimated to need 78 connections. Subtracting these connections from the additional 920 connections resulting from CEPT would leave 734 or approximately 750 connections available until the plant improvement project is completed." (Also see UVSD7770)

<sup>4</sup> Base point from which increase or decrease calculated. 186 ESSUS not included in totals.

<sup>5</sup> According to this document (UVSD 8310), there were only 920 CEPT ESSUS divided as follows: 708 DISTRICT [77%] and 212 CITY [23%]. This document (UVSD 8310) has a line item titled "10-2004 Increase", which added 460 CEPT ESSUS that were equally divided between DISTRICT and CITY. It increased the TOTAL CEPT ESSUS to 1,380 and changed the allocation to: 938 DISTRICT[67.8%]; and 442 CITY [32.2%].

<sup>6</sup> "The # of units are obtained by dividing the amount billed by current rate of \$16.51."

<sup>7</sup> Base point from which increase or decrease calculated.

Date	Bates	DISTRICT	CITY	TOTAL	<sup>1</sup> CEPT	<sup>2</sup> Bldg. Permits
2009-04-09	UVSD 23774	CEPT 699.73	CEPT 252.94	CEPT 952.67	+256.81	
2009-03-31	UK#11 0005	BLDG.P 9.97	BLDG.P 9.89	BLDG.P 19.86		248.96
2010-03-31	ES 0011	5,653.47	6,257.52	11,910.99		
2010-04-08	UVSD 18813	CEPT 844.38	CEPT 261.15	CEPT 1,105.53	+152.86	
2010-03-31	UK#11 0005	BLDG.P14.24	BLDG.P 5.15	BLDG.P 19.39		268.35
2011-03-31	UVSD 24467	5,653.47	6,257.52	11,910.99		
2011-03-31	UVSD 24467	CEPT 854.33	CEPT 264.64	CEPT 1,118.37	+12.84	
2011-03-31	UK#11 0006	BLDG.P 28.80	BLDG.P 35.30	BLDG.P 64.10		332.45
2012-03-31	UK#5 2274	5,653.47	6,257.52	11,910.99		
2012-03-31	UK#5 2274	CEPT 498.42	CEPT 301.331	CEPT 799.73	-318.64	
2012-03-31	UK#11 0006	BLDG.P 5.21	BLDG.P 2.69	BLDG.P 7.90		340.35
2013-03-31 <sup>8</sup>	UK#13 2307	5,668.4	6,292.98	11,961.38		
2013-03-31 <sup>9</sup>	UK#13 2307	CEPT 902.58	CEPT 500.89	CEPT 1403.47	+603.74	
2013-03-31	UK#11 0007	BLDG.P 2.54	BLDG.P 1.70	BLDG.P 4.24		344.59
2014-04-01 <sup>10</sup>	UK#5 2276	5,673.36	6,296.14	11,969.5		
2014-04-01 <sup>11</sup>	UK#5 2276	CEPT 902.7	CEPT 501.12	CEPT 1403.82	+35	
2014-03-31	UK#11 0007	BLDG.P 17.63	BLDG.P 2.50	BLDG.P 20.13		364.72
2015-03-31	UK#13 2277	5,692.22	6,297.14	11,989.36		
2015-03-31	UK#2 0001	CEPT 902.7	CEPT 501.12	CEPT 1403.82	0	
2015-03-31	UK#11 0008	BLDG.P 8.64	BLDG.P 15.21	BLDG.P 23.85		388.57
2016-04-01	UK#5 2278	5,700.07	6,306.64	12,006.71		
2016-04-01	UK#5 2278	CEPT 910.55	CEPT 510.52	CEPT 1421.07	+17.25	
2017-04-01		5718.01	6321.14	12,039.15		
2017-04-01		CEPT 928.49	CEPT 525.12	CEPT 1403.82	-17.25	
2018-04-01		5808.49	6414.15	12,222.64		
2018-04-01		CEPT 1018.97	CEPT 618.13	CEPT 1637.10	+233.28	
		NET INCREASE IN ESSUS (2004-03-31)		627.64		
			TOTAL CEPT increase since 2005-03-31		1112.83	
			TOTAL Building Permit ESSUS (2005-2015)			388.57

\* Same format. Different numbers.

\*\* Same format. Different numbers.

<sup>8</sup> Report dated January 31, 2013 (04/01/2012-03/31/2013). First row: "Report March 2013". Second row: "March 2012 % of Total." Third row: "Percent Use to Date January 2013".

<sup>9</sup> Report dated January 31, 2013 (04/01/2012-03/31/2013). First row: "Report March 2013". Second row: "March 2012 % of Total." Third row: "Percent Use to Date January 2013".

<sup>10</sup> Report dated April 1, 2014 (04/01/2013-03/31/2014). First row labeled: "Report March 2013".

<sup>11</sup> Report dated April 1, 2014 (04/01/2013-03/31/2014). First row labeled: "Report March 2013".

# EXHIBIT 6



**AGREEMENT RESOLVING DISPUTE UNDER SECTION  
II.E.1 OF THE OPERATING AGREEMENT BETWEEN  
THE CITY OF UKIAH AND THE UKIAH VALLEY  
SANITATION DISTRICT**

This Agreement is made and entered on January 16, 2019 (“Effective Date”), between the City of Ukiah (“City”), a general law municipal corporation and the Ukiah Valley Sanitation District (“District”), a county sanitation district. The City and the District may be referred to collectively in this Agreement as “the Parties.”

**RECITALS**

1. The City and the District entered an Operating Agreement with an effective date of October 3, 2018.

2. Section II.E.1 (“§E.1”) of the Operating Agreement provides that a dispute between the Parties currently exists concerning (a) the quantity of ESSUs actually used to date by each party from the 2,400 Capacity Project ESSUs and, in turn, (b) the remaining Capacity Project ESSUs available to each party (“the Dispute”).

3. In compliance with §E.1 the Parties have exchanged all available information and materials related to the dispute and otherwise diligently worked to and have resolved the Dispute.

4. The purpose of this Agreement is to memorialize the Parties’ determination and agreement as to (a) the quantity of Capacity Project ESSUs actually used to date by each party and, in turn, (b) the remaining Capacity Project ESSUs available to each party.

**AGREEMENT**

In consideration of and reliance upon the above-recitals and the terms and conditions stated below and other good and valuable consideration, the Parties agree as follows:

1. Any terms defined in the Operating Agreement shall have the same meaning when used in this Agreement.

2. As of January 10, 2019, the quantity of Capacity Project ESSUs actually used to date by each party from the 2,400 ESSUs made available through the Capacity Project are:

a. City: 369.56

b. District: 397.46

3. As of January 10, 2019, the number remaining ESSUs available to each party of the 2400 Capacity Project ESSUs are:

a. City: 470.44.

b. District: 1162.54.

3. Attached hereto as Exhibit A is an Excel spreadsheet establishing a record of each Connection having a Capacity Project ESSU and the number of such ESSUs attributable to each such connection.

4. This Agreement fully and finally resolves the Dispute. Since the actual ESSU capacity of the CITY and the DISTRICT, as determined by this Agreement, does not exceed the Parties' respective allocated quantity of Capacity Project ESSUs as specified in §E.2., no adjustment of remaining Capacity Project ESSUs is required to maintain the ratio of such capacity to which each party is entitled.

WHEREFORE, the Parties have entered this Agreement on the Effective Date.

CITY OF UKIAH

UKIAH VALLEY SANITATION DISTRICT

By: Maree Mulder

By: Theresa McNerlin  
By: Theresa McNerlin, Chair

Dated: ~~March~~, 2019 4/22/19

Dated: March 4, 2019

ATTEST:

ATTEST:

By: Kristine Lawler  
Kristine Lawler, City Clerk

By: Chelsea Teague <sup>3/5/19</sup>  
By: Chelsea Teague, Administrative Assistant

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: David J. Rapport  
David J. Rapport, City Attorney

By: Duncan James  
Duncan James, District Counsel

CITY OF UKIAH AND UVSD  
 ESSU STATISTICS REPORT  
 APRIL 1, 2018  
 04/01/2017 - 03/31/2018

	City Accounts # ESSU Units	UVSD #ESSU Units	Total All Acct. #ESSU Units
Report March 2018	6757.056	5441.26	12198.316
March 2017 % of Total	55.39%	44.61%	100.00%
Percent Use to Date March 2018	43.99%	25.48%	31.96%
New Plant 20 Year Net ESSU Used	369.56	397.46	767.016
New Plant Total ESSU's Remaining To Date	470.444	1162.54	1632.984
New Plant Agreement	35.00%	65.00%	100.00%
New Plant Capacity	840	1560	2400

CITY OF UKIAH  
CITY COUNCIL MINUTES  
Budget Workshop and Regular Meeting  
CIVIC CENTER COUNCIL CHAMBERS  
300 Seminary Avenue  
Ukiah, CA 95482  
April 17, 2019  
5:15 p.m.

---

1. **ROLL CALL**

Ukiah City Council met for a Budget Workshop followed by a Regular Meeting on April 17, 2019, having been legally noticed on April 12, 2019. Mayor Mulheren called the meeting to order at 5:18 p.m. Roll was taken with the following **Councilmembers Present:** Juan V. Orozco, Jim O. Brown, Stephen G. Scalmanini, Douglas F. Crane, and Maureen Mulheren. **Staff Present:** Sage Sangiacomo, City Manager; David Rapport, City Attorney (*arriving at 5:28*); Stephanie Abba, Deputy Clerk, and Kristine Lawler, City Clerk.

*MAYOR MULHEREN PRESIDING.*

2. **PLEDGE OF ALLEGIANCE**

*The Pledge of Allegiance was led by Dan Buffalo, Finance Director.*

5:15 **BUDGET WORKSHOP**

a. **Mid-Year Departmental Budget and Objectives Progress Review for Fiscal Year 18-19 and Review of Draft Objectives for Fiscal Year 19-20.**

**Presenters:** HUMAN RESOURCES – Daphine Harris, Finance Management Analyst; WATER RESOURCES – Sean White, Water Resources Director; and Dan Buffalo, Finance Director; COMMUNITY SERVICES – Tami Bartolomei, Community Services Director; Jarrod Meyers, Parks Supervisor; Jake Burgess, Recreation Supervisor; Kerry Randall, Facility Maintenance; and David Burton, Museum Director.

**Public Comment:** Susan Knopf and Martin Bradley.

*Human Resources, Water Resources, and Community Services department reports were received.*

*RECESS: 6:09 – 6:18 P.M.*

6:00 **REGULAR MEETING**

*NOTE: The regular meeting convened at 6:18 p.m.*

*Deputy Clerk, Stephanie Abba, stated for the record that attendance had not changed.*

**URGENCY ITEM**

**Presenter:** Tim Eriksen, Public Works Director / City Engineer.

**Motion/Second:** Crane/Brown to accept the urgency item due to timelines and place as agenda item 13b. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

3. **PROCLAMATIONS/INTRODUCTIONS/PRESENTATIONS**

a. **Presentation of Service Pin Recognizing David Rapport, City Attorney, for His 35 Years of Service - Since 1983 - to the City of Ukiah.**

**Presenter:** Sage Sangiacomo, City Manager.

**Public Comment:** Tim Erikson, Public Works Director/City Engineer.

*The Service Pin was presented to City Attorney Rapport for his many years of service.*

b. **Proclamation of the Ukiah City Council Recognizing April 18, 2019, as National Lineman Appreciation Day.**

**Presenter:** Mayor Mulheren.

*Proclamation was received by James Jeffers, Lineman.*

c. **Proclamation Recognizing April 28, 2019, as Workers Memorial Day.**

**Presenter:** Mayor Mulheren.

*Proclamation was received by Terry Poplawski, Mendocino County Coalition of Union Members President.*

d. **Presentation Regarding the "The Climate Change Reality Project."**

**Presenters:** Craig Schlatter, Community Development Director and Doug Nunn (*climate change speaker.*)

*Presentation was received.*

4. **PETITIONS AND COMMUNICATIONS**

*All communications have been received*

5. **APPROVAL OF MINUTES**

a. **Approval of the April 3, 2019, Budget Workshop and Regular Meeting Minutes.**

**Motion/Second:** Crane/Brown to approve Minutes of April 3, 2019, a budget workshop and regular meeting, as submitted. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

6. **RIGHT TO APPEAL DECISION**

7. **CONSENT CALENDAR**

a. Report of Disbursements for the Month of March 2019 – *Finance.*

b. Adoption of Resolution (2019-15) Approving Records Destruction – *City Clerk.*

c. Council will Review and Consider Approval of a Master Agreement (COU No. 1819-203) for Taxing Entity Compensation to allow properties listed in the agreement to be sold and/ or conveyed as outlined in the Ukiah Successor Agency to the Ukiah Redevelopment Agency's Long Range Management Plan – *Administration.*

- d. Report to City Council Regarding a Contract (COU No. 1819-196) with the City of Light Sound and Recording for Sound Equipment and Sound Technician Services for the 2019 Sundays in the Park Concert Series in the Amount of \$13,056 – *Community Services*.
- e. Report to City Council Regarding a Contract (COU No. 1819-180) with Los Lonely Boys Touring Inc. for a Band Performance at the 2019 Sundays in the Park Concert Series in the Amount of \$10,000 – *Community Services*.
- f. Adoption of Resolution (2019-16) to Extend the Declaration of a Local Emergency Related to the 2019 Winter Storm Event – *Community Services*.
- g. Authorize City Manager to Negotiate and Enter into an Amendment to Agreement (COU No. 1314-235-A2) for the Provision of Emergency Dispatch Services with the City of Fort Bragg – *Police*.
- h. Report to City Council Regarding a Contract (COU No. 1819-174) with The Original Wailers for a Band Performance at the 2019 Sundays in the Park Concert Series in the Amount of \$12,000 – *Community Services*.
- i. Approve Award of Bid to Gregg Simpson Trucking (COU No. 1819-204) for Construction for the Vinewood Park Renovation Project, Funded by Department of Housing Community Development, California, Housing-Related Parks Program – *Community Services*.

**Motion/Second:** Brown/Scalmanini to approve Consent Calendar Items 7a-7i, as submitted. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

8. **AUDIENCE COMMENTS ON NON-AGENDA ITEMS**

*No public comment was received.*

9. **COUNCIL REPORTS**

**Presenters:** Councilmembers Brown and Scalmanini.

10. **CITY MANAGER/CITY CLERK REPORTS**

**Presenters:** Sage Sangiacomo, City Manager; Sean White, Water Resources Director; and Craig Schlatter, Community Development Director.

11. **PUBLIC HEARINGS (6:15 P.M.)**

**a. The Ukiah City Council to Consider an Electric Rate for Electric Vehicle Charging Stations and Adopt the Proposed Electric Vehicle Charging Station Rate by Resolution.**

**Presenter:** Mel Grandi, Electric Utility Director.

*PUBLIC HEARING WAS OPENED AT 7:24 P.M.*

*No public comment was received.*

*PUBLIC HEARING WAS CLOSED AT 7:24 P.M.*

**Motion/Second:** Crane/Scalmanini to adopt the Proposed Electric Vehicle Charging Station Rate by Resolution (2019-17), with the modification of adding the rate table to the resolution. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

*RECESS: 7:27 – 7:34 P.M.*

**12. UNFINISHED BUSINESS**

- a. Approval and Authorization for the City Manager to Execute Agreement Resolving Dispute Under Section II.E.1 of the Operating Agreement Between the City of Ukiah and the Ukiah Valley Sanitation District Pertaining to the Amount Capacity Project Equivalent Sanitary Sewer Units (ESSUs) Remaining for Each Agency.**

**Presenter:** Sean White, Water Resources Director.

**Public Comment:** Steve Honeycutt, Guillon Inc.

**Motion/Second:** Crane/Scalmanini to approve and authorize Mayor Mulheren to Execute an agreement (*COU No. 1819-205*) resolving dispute under section II.E.1 of the Operating Agreement between the City of Ukiah and the Ukiah Valley Sanitation District. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

*Mayor direction to take a recess to fix technical difficulties.*

*RECESS: 7:49 – 8:01 P.M.*

- b. Review and Discussion of the 5-year Capital Improvement Plan and Measure Y-Streets Review in Preparation of the 2019/2020 Fiscal Year Budget.**

**Presenters:** Mary Horger, Procurement Manager; Dan Buffalo, Finance Director; and Tim Eriksen, Public Works Director / City Engineer.

**Public Comment:** Susan Sher, Ted Birch, Neil Davis, and Mark Hilliker.

*Reports were received.*

**Council Consensus** to direct staff to update the streets page online with the Pavement Condition Index (PCI) map.

**13. NEW BUSINESS**

- a. Receive Updates on City Council Committee and Ad Hoc Assignments and if Necessary, Consider Modifications to Assignments and/or the Creation/Elimination of Ad hoc(s).**

*No updates received.*

- b. Adoption of Resolution identifying the 2019-20 Project Funded by SB 1 (The Road Repair and Accountability Act) and approval of corresponding budget amendment for Orchard Avenue from East Perkins Street to Ford Street or identify an alternate project if warranted.**

**Presenter:** Tim Eriksen, Public Works Director / City Engineer.

**Motion/Second:** Crane/Scalmanini to adopt resolution (*2019-18*) identifying the 2019-20 Project Funded by SB 1: The Road Repair and Accountability Act, and approval of corresponding budget amendment. Motion **carried** by the following roll call votes: AYES: Orozco, Brown, Scalmanini, Crane, and Mulheren. NOES: None. ABSENT: None. ABSTAIN: None.

*CITY COUNCIL ADJOURNED TO CLOSED SESSION AT 9:19 P.M.*

**14. CLOSED SESSION**

**a. Conference With Legal Counsel—Anticipated Litigation**

(Government Code Section 54956.9(d))

A. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (Number of potential cases: 1.)

B. Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Number of potential cases: 1)

**b. Conference with Legal Counsel – Existing Litigation**

(Government Code Section 54956.9(d)(1))

Name of case: *Vichy Springs Resort v. City of Ukiah, Et Al; Case No. SCUk-CVPT-2018-70200*

**c. Conference with Real Property Negotiators**

(Cal. Gov't Code Section 54956.8)

Property: APN Nos: 157-050-03, 157-060-02, 157-050-04, 157-050-03, 157-030-02, 157-050-01, 157-050-02, 157-050-10, 157-050-09, 157-070-01, 157-070-02, 003-190-01

Negotiator: Sage Sangiacomo, City Manager;

Negotiating Parties: Dave Hull and Ric Piffero

Under Negotiation: Price & Terms of Payment

**d. Conference with Real Property Negotiators**

(Cal. Gov't Code Section 54956.8)

Property: APN Nos: 003-040-77; 003-040-78; 003-040-79

Negotiator: Sage Sangiacomo, City Manager;

Negotiating Parties: Shapiro/Danco

Under Negotiation: Price & Terms of Payment

**e. Conference with Real Property Negotiators**

(Cal. Gov't Code Section 54956.8)

Property: APN Nos: 002-273-19-00 and 002-273-30-00

Negotiator: Sage Sangiacomo, City Manager;

Negotiating Parties: Bank of America

Under Negotiation: Price & Terms of Payment

**f. Conference with Real Property Negotiators**

(Cal. Gov't Code Section 54956.8)

Property: APN Nos: 002-192-14-00 (280 E. Standley)

Negotiator: Sage Sangiacomo, City Manager;

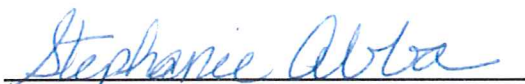
Negotiating Parties: Onetogether Solutions

Under Negotiation: Price & Terms of Payment

**Report Out:** City Attorney Rapport reported out of Closed Session that staff was given direction by the Council with respect to Agenda Item 14a.

**15. ADJOURNMENT**

There being no further business, the meeting adjourned at 10:55 p.m.



Stephanie Abba, Deputy Clerk



# EXHIBIT 7

## ORDINANCE NO. 35

### AN ORDINANCE OF THE UKIAH VALLEY SANITATION DISTRICT AMENDING SECTION 1 OF ORDINANCE NO. 27, REPEALING ORDINANCE NO. 11 AND AMENDING SECTION 6-4 OF ORDINANCE NO. 6 PERTAINING TO SEWER CONNECTION FEES

The Board of Directors of the Ukiah Valley Sanitation District hereby ordains as follows:

**1. Section 1 of Ordinance No. 27 adopted on October 25, 2006 is amended to read:**

- (l) The following charges are hereby established for the connection of the plumbing of any building, structure, or facility which discharges to the sewer system of the Ukiah Valley Sanitation or when a building, structure, or facility which is already connected to the sewer system is remodeled, modified, or upgraded in a manner that will generate or have the potential to generate greater quantity and/or strength of sewer waste effluent. The charges hereby established are separate from any other charges presently levied or which may be levied in the future:

A. Residential Schedule:

(1) For Single Family Dwellings, Duplexes, Triplexes, Fourplexes, Condominiums, Townhouses, and Apartments, a base connection fee of twelve thousand two hundred forty dollars (\$12,240) for each equivalent sewer service unit (ESSU) associated with each dwelling unit connected to the wastewater system based on the number of bedrooms according to the following schedule:

1. One bedroom	\$11,016.00 (0.90 ESSU)
2. Two bedroom	12,240.00 (1.00 ESSU)
3. Three bedroom	13,464.00 (1.10 ESSU)
4. For each additional bedroom	1,224.00 (0.10 ESSU)

(2) When a dwelling unit is remodeled to provide an additional bedroom as bedroom is defined herein, a charge of \$1224.00 shall be levied for each bedroom added.

(3) For Mobile Home Parks, each space shall be assigned 0.60 ESSU. The base connection fee for one ESSU is twelve thousand two hundred forty dollars (\$12,240); therefore, the connection fee for 0.60 ESSU is \$7,344.00.

B. Commercial, Industrial and Public Facility Schedule

(1) A base connection fee of Twelve Thousand two hundred forty dollars (\$12,240) for each ESSU associated with commercial, industrial or public facility connections. The ESSU allocation shall be determined from the ESSU Allocation Table provided herein. If the type of facility is not included in the ESSU Allocation Table, the ESSU

ORDINANCE NO. 35

assignment shall be determined by the District based on average daily flow, biochemical oxygen demand (BOD), total suspended solids (TSS) of the discharged sewerage effluent, and any other sewage characteristics as the District deems appropriate. One (1) ESSU is shall be 210 gallons per day of effluent flow having BOD and TSS of 0.45 and 0.50 pounds per day, respectively.

ESSU ALLOCATION TABLE FOR COMMERCIAL, INDUSTRIAL, AND PUBLIC FACILITIES

Category	Unit of Measure	ESSU Per Unit of Measure
Animal Kennel excluding office	per cage	0.03
Appliance Repair	1000 sf	0.95
Art Gallery	1000 sf	0.95
Auditorium/Amusement	1000 sf	1.3
Auto Dealers/Sales w/Service Facilities	per connection	1.04
plus	add per service bay	0.21
Or, without service facilities	per connection	0.95
Auto Repair (includes small office)	per service bay	0.52
Bakery/Butcher	1000 sf	2.83
Barber Shop	per chair	.07
Beauty Salon	per chair	0.13
Bank/Credit Union/Financial institutions	1000 sf	0.65
Bars and Taverns	per seat	0.10
Bowling/Skating	1000 sf	0.99
Campground/Marina/RV Park w/ hookups	per site/slip/space	0.63
Without hookups	per site	0.38
Car Wash - Tunnel w/o recycling	1000 sf	13.78
Car Wash - Tunnel w/ recycling	1000 sf	10.15
Car Wash - Wand type/self serve	per stall	0.59
Church, Club & Lodge Halls	per seat	0.01
Or per	1000 sf	0.46
Coffee Shops	per seat	0.09
Commercial Kitchen/Cafeteria	1000 sf	8.06
Dry Cleaners	1000 sf	1.10
Fire Stations	1000 sf	0.95
Gas Station (includes small convenience store)	set of gas pumps (max of 4 per set)	2.09
Heath Spa/Gym (without showers)	1000 sf	1.12
Heath Spa/Gym (with showers)	1000 sf	2.24
Hotel/Motel/Rooming House	rooms	0.52
Horse Stables	stalls	0.15

ORDINANCE NO. 35

Category	Unit of Measure	ESSU per Unit of Measure
Hospitals		
Convalescent	per bed	0.57
General	per bed	0.80
Veterinarian excluding stables/kennels	1000 sf	0.38
Laundromat	per washing machines	1.92
Library	1000 sf	0.95
Lumber Yard	1000 sf	0.15
Machine Shop	1000 sf	0.84
Manufacturing - Domestic waste only	per employee per shift per day	0.10
non domestic shall be calculated		
Markets	1000 sf	0.57
Medical/Dental/veterinary Clinic	1000 sf	1.12
Mortuary/Funeral Home	1000 sf	0.89
Night Club	1000 sf	1.3
Nursery/Greenhouse	1000 sf	0.10
Office Building	1000 sf	0.75
Business	1000 sf	0.26
Dental	per exam room	0.65
Medical	per exam room	0.65
Open Storage	1000 sf	0.15
Post Office	1000 sf	0.65
Restaurants - Dine-in - limited hours		
w/ dishwasher & garbage disposal units	per seat	0.09
w/ dishwasher or garbage disposal unit	per seat	0.06
w/o dishwasher & garbage disposal units	per seat	0.03
Restaurant - Dine in (24 hour)	per seat	0.10
Restaurant - Take Out or Fast Food	1000 sf	2.30
Rest Homes	per bed	0.57
Retail Store	1000 sf	0.18
Schools		
Elementary	Per student day	.03
Junior High & High	Per student day	.05
Shoe Repair	1000 sf	0.95
Special Event Center	attendance	0.03
Theater (drive-in)	1000 sf	0.08
Theater (fixed seating)	per seat	0.01
Theater (open seating)	1000 sf	0.58
Warehousing	1000 sf	0.15

ORDINANCE NO. 35

Category	Unit of Measure	ESSU per Unit of Measure
Wholesale Outlet - excludes specialty departments such as bakeries/butcher shops	1000 sf	0.38

(2) When ESSUs are to be calculated, the following formula shall be used:  

$$\text{ESSUs} = (\text{TSS mg/l} \times \text{FLOW in gal per day} \times 0.33) / (200 \text{ mg/l} \times 210 \text{ gal}) + (\text{BOD mg/l} \times \text{FLOW in gal per day} \times 0.33) / (200 \text{ mg/l} \times 210 \text{ gal per day}) + (\text{FLOW in gal per day} \times 0.34) / (210 \text{ gal per day}).$$

(3) If a discharger disagrees with the fee established by the District under subsection B(1) above, the discharger may file a written appeal with the Clerk of the Board within ten (ten) days of the notification of the charge. The appeal will then be heard by the Board of Directors at its next regularly scheduled meeting, occurring not sooner than 10 days following the receipt of the written request for appeal. At that time, the Board shall determine whether or not the charge is justified.

(4) When a plumbing fixture is added to an existing commercial, industrial, or public facility without the addition of square footage to the building or structure that can be occupied by a person and the use of the structure or building has not changed, it will be assumed that full connection fees were paid based on the units of measure for that structure prior to the proposed addition of the plumbing fixture, and new connection fees shall be due for the added plumbing fixture. For each fixture unit assigned to the type of plumbing fixture added (as assigned by the Plumbing Code), an ESSU allocation of 0.04 shall be made.

C. Future Amendments to Fees

The District Board of Directors may amend the connection fees, as set forth in subsections A and B, above, by resolution without further amendment of the District ordinances.

(II) The District Manager shall maintain a list of all the connections with a tabulated total of the ESSUs that have been allowed to connect to the District's sewer collection system for the purpose of determining the remaining ESSUs that can be allocated. This duty may be transferred to the City of Ukiah Engineering Department if the Department is performing plan check duties for the District.

(III) The term "equivalent sewer service unit (ESSU)" shall have the same meaning as the term "Sewer Service Unit" as that term is defined in Section 1.12 of Ordinance No. 12

(IV) The term "bedroom" as used herein shall include any lawful room under the current California Building Code that can be used as a bedroom, no matter how designated on the building plans; provided, however, that a residential dwelling unit

ORDINANCE NO. 35

may have one living room, dining room, garage, kitchen, and family room that shall not be considered as a bedroom. Bathrooms shall not be considered as bedrooms.

(V) An interest surcharge of \$541.00 shall be added to the base connection fee for each ESSU of allocation to offset the interest expense for monies borrowed by the District at a rate of 4% from the existing rate payers as a result of the expected shortage in revenues needed to make the annual debt service payment associated with the expansion component of the 2005 Wastewater Treatment Plant Rehabilitation and Expansion Project. Should an ESSU allocation be a fractional unit of one ESSU, the interest surcharge shall be the same fractional unit of the interest surcharge of \$541.00 as the ESSU allocation carried to the one hundredth decimal point. The District Board of Directors may amend the interest surcharge, as set forth herein by resolution without further amendment of the District ordinances.

**2. Ordinance No. 11 is hereby repealed.**

**3. Section 6-4, Time of Payment, of Ordinance No. 6 adopted on December 3, 1973 is amended to read:**

6-4 Time of Payment

(I) The base sewer connection fees and interest surcharges applied to the connection fees, as set forth in this and future amended Ordinances or by resolution if the fees are permitted to be changed by resolution, shall be payable at or before the time a building permit is issued by the County of Mendocino or City of Ukiah for a proposed building or structure or for the addition or modification to an existing building and structure, except in the case when a Conditional Will Serve Letter is issued for a Project and the time and amount of payment is stipulated in the Conditional Will Serve Letter. If the County of Mendocino or the City of Ukiah do not have jurisdiction for issuing a permit for a Project, then the fees established herein shall be due prior to connecting the Project to a sewer under the jurisdiction of the District or due when stipulated in a Conditional Will Serve Letter.

(II) Pursuant to Section 5474 of the Health and Safety Code of the State of California, the amount of the fees and the interest surcharge applied thereon shall constitute a lien against the respective lots or parcels of land to which the facilities are connected at the time and in the manner specified in Sections 5473.5 and 5473.8 of said Health and Safety Code.

(III). At the applicant's option, the applicant may pay at the time the base connection fee is due and payable in accordance with paragraph (I) above a minimum of 25% of the base connection fee that is due and may pay the balance of the base connection fee on an annual basis at an annual interest rate of 5% over a twenty year period. The annual payment plus installment interest payment shall be collected on the tax roll as a special assessment. Should the business for which the base connection fee was calculated cease to be in business, the remaining amount owed will not be referred to the County Auditor for placement on the tax roll for the fiscal year that begins subsequent to the business failure. The entire

ORDINANCE NO. 35

amount of the interest surcharge that is due pursuant to paragraph (V) of Section 1 of this Ordinance shall be paid as set forth in paragraph (I) of this Section 3.

**4. This ordinance shall become effective thirty (30) days after adoption.**

Introduced by title only on January 20, 2011, by the following roll call vote:

AYES: Directors Porter, Pallesen, McNerlin, and Ronco  
NOES:  
ABSENT:  
ABSTAIN:

**PASSED AND ADOPTED** by the Board of Directors of the Ukiah Valley Sanitation District, County of Mendocino, State of California, on this 21st day of July, 2011, by the following roll call vote:

AYES: Directors Ronco, Porter, McNerlin, and Marshall  
NOES:  
ABSENT: Director Pallesen  
ABSTAIN:

**WHEREUPON**, the Chairman declared the Ordinance passed and adopted and **SO ORDERED**.

\_\_\_\_\_  
James Ronco, Board Chair

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Rick Kennedy  
District Manager/Clerk of the Board

\_\_\_\_\_  
Ross Walker, Deputy County Counsel  
District Legal Counsel

# EXHIBIT 8



ENDORSED  
FILED

NOV 25 2015

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

1 LAW OFFICES OF DUNCAN M. JAMES  
2 DUNCAN M. JAMES, CA State Bar No. 40505  
3 DONALD J. McMULLEN, CA State Bar No. 220840  
4 DOUGLAS L. LOSAK, CA State Bar No. 220443  
5 P.O. Box 1381  
6 Ukiah, CA 95482  
7 Telephone: (707) 468-9271

8 Attorneys for Plaintiff

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SONOMA

11 \* \* \* \* \*

12 UKIAH VALLEY SANITATION DISTRICT,  
13 a Public Agency,

14 Plaintiff,

15 vs.

16 CITY OF UKIAH, a General Law City; and,  
17 DOES 1 through 100, inclusive,

18 Defendants.

CASE NO.: SCV 256737

Unlimited Civil Action

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR: A  
PRELIMINARY INJUNCTION (C.C.P.  
§ 527(a)); OR, ALTERNATIVELY, THE  
APPOINTMENT OF A RECEIVER (C.C.P. §  
564(b)(9))

Judge: Hon. Gary Nadler

Date: MAR - 9 2016

Time:

Dept:

21 //

22 //

23 //

24 //

25 //

26

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

I. INTRODUCTION.....1

II. FACTS.....1

    A. OVERVIEW OF CONTRACTUAL RELATIONSHIP.....1

    B. THE DISTRICT'S PREVIOUS ATTEMPTS TO HAVE THE CITY TRANSFER FUNDS BELONGING TO THE DISTRICT.....5

    C. PROCEDURAL HISTORY.....5

III. LEGAL ANALYSIS.....6

    A. A PRELIMINARY INJUNCTION REQUIRING THE CITY TO TRANSFER THE DISTRICT'S FIDUCIARY FUNDS IS APPROPRIATE.....6

        1. The District is likely to prevail on its claims related to the transfer of fiduciary funds held by the City.....7

        2. The District has shown that it will suffer irreparable harm if the court does not order the transfer at this time.....8

    B. IF THE COURT DECLINES TO ISSUE A THE PRELIMINARY INJUNCTION, COURT SHOULD APPOINT A RECEIVER TO OVERSEE THE USE / DISBURSEMENT OF THE CITY-HELD DISTRICT FUNDS.....11

IV. CONCLUSION.....13

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**TABLE OF AUTHORITIES**

Cases:

*Barclays Bank of California v. Superior Court*  
(1977) 69 Cal.App.3d 593 ..... 11

*Butt v. State of California*  
(1992) 4 Cal. 4th 668 ..... 8

*Golden State Glass Corp. v. Superior Ct.*  
(1939) 13 Cal.2d 384 ..... 12

*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*  
(2005) 129 Cal.App.4th 1228 ..... 7

*IT Corp. v. County of Imperial*  
(1983) 35 Cal.3d 63 ..... 7

*Lam v. Ngo*  
(2001) 91 Cal.App.4th 832 ..... 7

*Marsch v. Williams*  
(1994) 23 Cal.App.4th 238 ..... 11

*Michelson v. Hamada*  
(1994) 29 Cal.App.4th 1566 ..... 7

*Morand v. Superior Court*  
(1974) 38 Cal.App.3d 347 ..... 12

*White v. Davis*  
(2003) 30 Cal.4th 528 ..... 6

Statutes:

*Code of Civil Procedure* § 527(a) ..... 1

*Code of Civil Procedure* § 527, subdivision (a) ..... 6

*Code of Civil Procedure* § 564 ..... 11, 12

*Code of Civil Procedure* § 564 (b)(9) ..... 1, 11

*Code of Civil Procedure* § 564 (a)(9) ..... 11

Health & Saf. Code, § 4701 ..... 1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**I. INTRODUCTION**

Defendant, City of Ukiah ("City"), has approximately 7.2 million dollars belonging to Plaintiff, Ukiah Valley Sanitation District ("District"). City refuses to deposit the money into District's account with the County of Mendocino, which prevents District from accessing and using said funds for lawful purposes. Among other things, this action allows City, who acts as District's fiduciary, to control the "purse strings" of this litigation, wherein District is pursuing the rights of its ratepayers. City's conduct also makes it impossible for District to pay necessary expenses, including those not shared between the parties.

Therefore, District requests this court issue a preliminary injunction requiring City turn over all District funds in City's actual or constructive possession that exceed District's annual expenses and obligations under the various agreements between the parties. (Code Civ. Proc., § 527(a).) In the alternative, District requests the court appoint a receiver under *Code of Civil Procedure* section 564 (b)(9).

**II. FACTS**

**A. OVERVIEW OF CONTRACTUAL RELATIONSHIP**

District is a duly organized Sanitation District, formed by the Mendocino County Board of Supervisors on or about July 6, 1954, pursuant to the County Sanitation District Act. (Health & Saf. Code, § 4701 *et seq.*) City, is a General Law City located in Mendocino County. The parties jointly operate a sewer system and treatment facilities in Ukiah, California.

The current legal relationship between the parties is found in a series of agreements, namely the PARTICIPATION AGREEMENT, as amended, (F. McMichael Decl. ¶¶ 6-7, Exh. 1-3) and the FINANCING AGREEMENT (*Id.*, ¶ 10, Exh. 6). The PARTICIPATION AGREEMENT was entered into in July 1995 and was amended once in 1999, "AMENDMENT #1," and again in 2004, "AMENDMENT #2". (*Id.*, ¶¶ 6-7, Exh. 1-3.) The parties entered into AMENDMENT #2 because the wastewater treatment plant ("WWTP"), which City owns but

1 both parties use, was nearing capacity and required an upgrade to satisfy regulatory-wastewater  
2 requirements. (*Id.*, Exh. 3.)

3 AMENDMENT #2 divided the WWTP project into a Capacity Project (increase plant  
4 capacity) and an Upgrade/Rehabilitation Project (upgrade plant). (F. McMichael Decl., Exh. 3.)  
5 AMENDMENT #2 calls for the District to pay 65 percent and the City to pay 35 percent of the  
6 Capacity Project, which is based on an estimate of funds needed through the year 2020 but  
7 requires an annual re-allocation of costs using specific criteria. (*Id.*, Exh. 3, § 2.1.) The cost of  
8 the Upgrade/Rehabilitation Project is divided between the parties based on the annual  
9 equivalent sewer service unit ("ESSU") ratio between the parties, which "shall be calculated  
10 each year at the same time and in the same manner as other costs allocated under Section 1 of  
11 the Participation Agreement." (*Id.*, Exh. 3, § 2.2.) While AMENDMENT #2 established the  
12 parties' payment ratios for the required financing for the project.

13 On March 1, 2006, the City entered into an agreement with the Association of Bay Area  
14 Governments ("ABAG") to secure financing for the Capacity and Upgrade projects  
15 ("INSTALLMENT SALE AGREEMENT"). (F. McMichael Decl., ¶ 9, Exh. 5.) The  
16 INSTALLMENT SALE AGREEMENT called for ABAG to issue its Series A Wastewater  
17 Revenue Bonds in the amount of \$75,060,000 for the WWTP, which City agreed to repay in  
18 semiannual installments. (*Id.*, Exh. 5, §§ 3.1 and 4.4(a).) The District was *not* a signatory to  
19 said agreement.

20 Through that agreement, the City secured the bond payments by pledging the net  
21 revenue from the Wastewater System, which included the District facilities. (F. McMichael  
22 Decl., Exh. 5, § 4.5(a).) The City-ABAG INSTALLMENT SALE AGREEMENT, Section  
23 4.5(a), states in pertinent part: "All of the Net Revenues and all moneys on deposit in any of the  
24 funds and accounts established and held by the Trustee under the Indenture are hereby

1 irrevocably pledged to the punctual payment of the Installment Payments." (*Id.*, Exh. 5, §  
2 4.5(a).)

3 Section 4.5(b) of the INSTALLMENT SALE AGREEMENT requires all funds  
4 collected from the sewer system, including the District's funds, to be deposited into a  
5 Wastewater Fund, then applied to various expenses. Section 4.5(b) also states:

6 "...the City will apply amounts on deposit in the Wastewater Fund to pay when  
7 due the following amounts in the following order of priority: (i) all Operation and  
8 Maintenance Costs; (ii) the Installment Payments, except to the extent payable  
9 from amounts transferred from the Capitalized Interest Fund to the Revenue Fund  
under the Indenture; [...] and (v) **any other purposes authorized under  
subsection (d) of this Section.**" (*Id.*, Exh. 5, § 4.5(b), emphasis added.)

10 In, turn, Subsection (d) of that section provides:

11 "The City will manage, conserve and apply the Net Revenues on deposit in the  
12 Wastewater Fund in such a manner that all deposits required to be made under the  
13 preceding subsection (b) are made at the times and in the amounts so required.  
14 Subject to the foregoing sentence, **so long as no Event of Default has occurred**  
15 **and is continuing hereunder, the City may use and apply moneys in the**  
16 **Wastewater Fund for** (i) the payment of any subordinate obligations or any  
unsecured obligations, (ii) the acquisition and construction of improvements to  
the Wastewater System, (iii) the prepayment of any other obligations of the City  
relating to the Wastewater System, or (iv) **any other lawful purposes** of the  
City." (*Id.*, Exh. 5, § 4.5(d), emphasis added.)

17 The INSTALLMENT SALE AGREEMENT secured the City's obligation to repay the  
18 bonds, but did not obligate the District in any manner; again, the District was *not* a party to the  
19 agreement. On March 2, 2006, the District and City entered into the FINANCING  
20 AGREEMENT to ensure the District's payment for its share of the City's bond obligation. (F.  
21 McMichael Decl., Exh. 6.) The FINANCING AGREEMENT called for the District's portion of  
22 the City's bond costs to be paid in accordance with the PARTICIPATION AGREEMENT,  
23 AMENDMENT #2, in the same manner in which the City's bond payments are secured under  
24 the City's INSTALLMENT SALE AGREEMENT. (*Id.*, Exh. 6, p. 1.) The FINANCING  
25 AGREEMENT also required the District to set its sewer rates and connection fees to bring in

1 net revenues (total District revenue less its share of sewer system expenses) such that said  
2 revenues would equal 120% of the District's share of the City's bond obligation for a given  
3 fiscal year. (*Id.*, Exh. 6, p. 2.)

4 In addition, the FINANCING AGREEMENT allows the District to establish a Rate  
5 Stabilization Fund, which is a reserve that enables the District to continue its operations and, if  
6 necessary, pay its share of the City's bond payments without having to increase rates. (F.  
7 McMichael Decl., Exh. 6, p. 2.) Thus, if the District failed to generate enough revenue to meet  
8 the 120% mark, its money in the Rate Stabilization Fund could be used to pay its share of the  
9 City's bond obligation without dramatic rate increases. Furthermore, the Rate Stabilization  
10 Funds can be used by the District for any other lawful purpose. (*Id.*, Exh. 6, p. 2.)

11 The FINANCING AGREEMENT also states that the District's share of the City's bond  
12 payment obligation is secured in the same manner in which the City's financing is secured under  
13 the INSTALLMENT SALE AGREEMENT. (F. McMichael Decl., Exh. 6, p. 1.) The City  
14 secured its payments under the INSTALLMENT SALE AGREEMENT with a pledge of net  
15 revenues from the Wastewater System. (*Id.*, Exh. 5, p. 1.) As set forth above, despite this  
16 pledge, however, the INSTALLMENT SALE AGREEMENT specifically allows the City to use  
17 net revenues for any lawful purpose if no default has occurred. (F. McMichael Decl., Exhibit 5,  
18 § 4.5.)

19 In short, the FINANCING AGREEMENT secures the District's share of the City's bond  
20 payments in the same manner as the City secured the payments in its INSTALLMENT SALE  
21 AGREEMENT. Therefore, despite its purported pledge, the District should likewise be able to  
22 use its net revenue for any lawful purpose if no default has occurred. If the District is held to  
23 the same security standards as City, it should also have the same rights to use its net revenue.

24 According to a City financial document entitled Statement of Fiduciary Net Position, the  
25 City carries a liability called "Due to Ukiah Valley Sanitation" of approximately \$7,600,000

1 ("Fiduciary Fund"). (F. McMichael Decl., ¶ 11, Exh. 7.) Nearly every year since entering the  
2 PARTICIPATION AGREEMENT, the District generated more revenue than it spent. (*Id.*, ¶ 13,  
3 Exh. 7.) In fact, nearly every year since 1991 the California State Controller reports that the  
4 District enjoyed a surplus. (*Id.*, ¶13.) The District is informed that the Fiduciary Fund is made  
5 up of roughly 25 years of fiscal year-end surplus, as well as other income sources. (*Id.*, ¶ 14;  
6 Exh. 7.) The District is unable at present to arrive at the precise amount because the City is, at  
7 least for now, responsible for maintaining complete records and accounts for all sewer revenues  
8 it collects and refuses District open access to the books and records. (*Id.*, ¶ 31, Exh. 1, p. 3.)

9 **B. THE DISTRICT'S PREVIOUS ATTEMPTS TO HAVE THE CITY**  
10 **TRANSFER FUNDS BELONGING TO THE DISTRICT.**

11 The District requested the Fiduciary Funds several times, but the City refuses to transfer  
12 the funds. (F. McMichael Decl., ¶ 13.) On October 27, 2014, the District's Board of Directors  
13 passed a resolution authorizing Chairman James Ronco to demand in writing that the City  
14 transfer all Fiduciary Funds being held for the District. (*Id.*, ¶ 16, Exh. 8.) Mr. Ronco did so on  
15 October 29, 2014. (*Id.*, ¶17, Exh. 9 and J. Ronco Decl., Exh. 9.) In March 2015, the City's  
16 attorney, David J. Rapport, responded to the District's request, refusing to transfer the funds. (F.  
17 McMichael Decl., ¶ 18, Exh. 10.)

18 **C. PROCEDURAL HISTORY**

19 The District filed this lawsuit on or about October 18, 2013. A First Amended  
20 Complaint (FAC) was filed on or about December 19, 2014. On November 10, 2015, the  
21 District filed its Second Amended Complaint (SAC). The District is seeking the following  
22 relief as to all causes of action: (a) An order to appointing a Special Master to handle all income  
23 and expenses arising out of the operation of the entire sewer system (treatment plant, trunk  
24 sewer, and collection system) pending the final judgment in this matter; (b) An accounting of all  
25 revenue collected by the City for its own benefit and that of the District; (c) An order declaring



1 that City holds the revenue collected for the benefit of the joint venture in a trust for the benefit  
2 of the District; (d) An order requiring City to pay District in an amount to be shown according  
3 to proof. The City has yet to file a response to the SAC.

### 4 III. LEGAL ANALYSIS

#### 5 A. A PRELIMINARY INJUNCTION REQUIRING THE CITY TO 6 TRANSFER THE DISTRICT'S FIDUCIARY FUNDS IS APPROPRIATE.

7 The District requests this Court issue a mandatory preliminary injunction requiring the  
8 City to transfer all funds of the District, in the possession or control of the City, to the District,  
9 with the exception of 120% of the aggregate amount of the District bond payments for the  
10 current fiscal year. For fiscal year 2015, the District's share of the bond payment obligation was  
11 approximately \$2.5 million dollars. One Hundred Twenty percent of this amount is  
12 approximately \$3 million dollars. The annual net revenue for the District for Fiscal Year 2014-  
13 2015 was approximately \$4.1 million dollars. According to the City's own records, the City  
14 holds over \$7 million of District funds. (F. McMichael Decl., Exh. 7).

15 *Code of Civil Procedure* section 527, subdivision (a), provides:

16 "A preliminary injunction may be granted at any time before judgment upon a  
17 verified complaint, or upon affidavits if the complaint in the one case, or the  
18 affidavits in the other, show satisfactorily that sufficient grounds exist therefor."

19 "[W]hether a preliminary injunction should be granted involves two interrelated factors:

20 (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of  
21 harms that is likely to result from the granting or denial of interim injunctive relief." (*White v.*  
22 *Davis* (2003) 30 Cal.4th 528, 554, italics omitted.) "Trial courts should evaluate two  
23 interrelated factors when deciding whether or not to issue a preliminary injunction. The first is  
24 the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm  
25 that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that  
26

1 the defendant is likely to suffer if the preliminary injunction were issued." (*IT Corp. v. County*  
2 *of Imperial* (1983) 35 Cal.3d 63, 69.)

3 **1. The District is likely to prevail on its claims related to the**  
4 **transfer of fiduciary funds held by the City.**

5 A single cause of action can sustain a preliminary injunction. (*Lam v. Ngo* (2001) 91  
6 Cal.App.4th 832, 844; See also *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal*  
7 *Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1248.) In this case, the Fourth Cause of  
8 Action (Breach of Fiduciary Duty), Counts II and III, to the District's Second Amended  
9 Complaint seeks:

10 Count II - Damages for breach of Fiduciary Duty by the City in the performance  
11 or nonperformance of its duties pursuant to the PARTICIPATION  
12 AGREEMENT, (Exhibit F), AMENDMENT # 1 and AMENDMENT # 2, as  
13 amended, in an amount according to proof (SAC page 91, lines 18-22)

14 Count III - Damages for breach of Fiduciary Duty by the City in the performance  
15 or nonperformance of its duties pursuant to the FINANCING AGREEMENT, in  
16 an amount according to proof (*Id.*, page 91, lines 23-25) ;

17 "An agent is a fiduciary." (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579.)

18 The PARTICIPATION AGREEMENT states "the City shall be the paying and receiving agent  
19 for all District operation and maintenance funds." The FINANCING AGREEMENT states that  
20 "[a]ll such revenues will be collected by the City in accordance with the Participation  
21 Agreement, and the City will apply such revenues to pay the District Payments on behalf of the  
22 District. In addition, the PARTICIPATION AGREEMENT authorizes the District to establish a  
23 Rate Stabilization Fund, and deposit money in said fund "from any source of legally available  
24 funds." Legally available funds include funds collected by the City for the District, which  
25 exceeds the 120% net revenue requirement in the FINANCING AGREEMENT.

26 The City is therefore a fiduciary with respect to the District based on the unambiguous  
language in the agreements. The District has requested, on several occasions, that the City  
transfer all or part of the unencumbered Fiduciary Funds to an account held by the District. The

1 INSTALLMENT SALE AGREEMENT and the FINANCING AGREEMENT clearly allow the  
2 District to use said funds for any lawful purpose, but the City continues to thwart the District's  
3 efforts to obtain those funds in breach of its duty to the District.

4 As such, the District is likely to prevail on its Breach of Fiduciary causes as the City  
5 refuses to transfer the funds to the District's detriment.

6 **2. The District has shown that it will suffer irreparable harm**  
7 **if the court does not order the transfer at this time.**

8 The District has established that it will likely prevail on the applicable causes of  
9 actions/claim, as there is no dispute that the City is holding the subject money for the District  
10 and the City has no legal claim to the funds in question. Therefore, the next issue is, the relative  
11 harm to the parties from the issuance or non-issuance of the injunction. (*Butt v. State of*  
12 *California* (1992) 4 Cal. 4th 668, 677-78.)

13 Here, the District will clearly suffer harm if the injunction is not granted. The District  
14 currently has approximately \$2,300,000 in its Rate Stabilization account, but those funds are  
15 generally not designated to pay expenses. As noted previously, those funds are used to protect  
16 against the need for a sudden rate increase in the event the District incurs an unexpected  
17 expense. In addition, the District currently has about \$600,000 in an account with Mendocino  
18 County, which can be used to pay the expenses the City refuses to share with the District in  
19 accordance with the PARTICIPATION AGREEMENT. (F. McMichael Decl, ¶ 26.) The  
20 District expenses not currently shared with the City amount to about \$75,000 per month. (F.  
21 McMichael Decl, ¶ 26.) With only \$600,000 available at \$75,000 per month, the District will  
22 be out of funds in eight months, leaving it without a manager and adequate legal counsel.

23 The District's harms vastly outweigh the City's purported harms. As mentioned above,  
24 in March 2015, the City refused the District's request to transfer the Fiduciary Funds. The City  
25 claimed that, because the FINANCING AGREEMENT provides that District revenue be

1 collected by the City, the District breached the FINANCING AGREEMENT by collecting  
2 revenue on its *own* delinquent customer accounts. (F. McMichael Decl., ¶ 18, Exh. 10; Exh. 6,  
3 § 2.)

4       However, not all District ratepayers make payments and some accounts become  
5 delinquent. While the City is contractually bound under the FINANCING AGREEMENT to  
6 collect from District customers, after three-months delinquency, the City simply halts all  
7 attempts to collect on the District's delinquent accounts, resulting in lost revenue for the District.  
8 Once the City does so, the District takes up the collection effort through the Mendocino County  
9 Tax Roll. This is properly done through noticed public meetings. The District need not collect  
10 from these customers absent the City halting its collection efforts. (F. McMichael Decl., ¶¶ 20-  
11 22.) In any event, the District's act of collecting *its own revenue* in no way harms City.

12       The City's March 2015 letter denying the transfer request also claimed that the District's  
13 actions in collecting on its delinquent accounts created a "potential" "Event of Default," under  
14 the INSTALLMENT SALE AGREEMENT. The INSTALLMENT SALE AGREEMENT,  
15 Section 6.1, entitled "Events of Default Defined," defines default in pertinent part as follows:

16       **"(c) Failure by the City to observe and perform any covenant, condition or**  
17 **agreement on its part to be observed or performed...for a period of 60 days**  
18 **after written notice** specifying such failure and requesting that it be remedied  
19 **has been given to the City** by the Authority, the Bond Insurer or the Trustee;  
20 provided, however, that if the City notifies the Authority and the Trustee that in  
21 its reasonable opinion the failure stated in the notice can be corrected, but not  
22 within such 60-day period, such failure will not constitute an event of default  
23 hereunder if the City commences to cure such failure within such 60 day period  
24 and thereafter diligently and in good faith cures the failure in a reasonable period  
25 of time." (F. McMichael Decl. ¶ 9, Exh. 5, p. 12.)

26       First, the District is not a party to that agreement and cannot be in default of it. Second,  
there is no evidence to suggest that the City was given the requisite written notice of any default  
due to the District's efforts to collect revenue from delinquent customers for which City halted  
all collection efforts. Third, even if such notice was provided, a simple offset of delinquent

1 collections could easily cure any potential breach given that the District has over \$7 million in  
2 the Wastewater Fund. In any event, there is no evidence of an "Event of Default," potential or  
3 otherwise, and even if there were, it is no reason for City to refuse to transfer the funds.

4 Finally, it defies all sense of justice to allow the City, who sits in a fiduciary position, to  
5 hold the District's purse strings during litigation to which City is a party. The agreements  
6 expressly permit lawful use of the funds so long as District net revenue are equal to 120% of its  
7 bond payments *for a given fiscal year*. (F. McMichael Decl., ¶¶ 9-10, Exh. 6, § 2.) Moreover,  
8 even if District revenue came up short of the 120% mark, it could simply use the \$7 million in  
9 Fiduciary Funds to bridge any gap. (F. McMichael Decl., Exh. 6 § 2.) Under this reasoning, the  
10 covenants in the agreements remain intact and workable. There is simply no harm to be realized  
11 by City.

12 In summary, the District is likely to prevail on its cause of action relating to the transfer  
13 of the funds held by the City. The City's own budget documents show that the City holds more  
14 than seven million dollars of District funds. The City's only possible reason for holding onto  
15 the funds (other than it prevents the District from paying its legal fees) is that the funds are  
16 necessary for the City to comply with the terms of its INSTALLMENT SALE AGREEMENT.  
17 Again, the terms of that agreement relevant to this situation involve the City's pledge of net  
18 revenues held in its accounts for the purposes of meeting its bond payment obligations. (F.  
19 McMichael Decl., Exh. 6, § 2.) **However**, that agreement also expressly allows City to use  
20 those same funds for any lawful purpose as long as it is not in default under the agreement. (F.  
21 McMichael Decl., Exh. 5, § 4.5.)

22 Without conceding that the District is bound by the terms of the INSTALLMENT SALE  
23 AGREEMENT, and assuming for the purpose of this motion only that it is, if the City is  
24 permitted to use the money in the Wastewater Fund for any lawful purpose, such an allowance  
25 would also apply to the District. As such, since a lawful purpose includes payment of

1 administrative costs incurred by the District, including, among other things, attorney fees in  
2 asserting its legal rights on behalf of its customers.

3 Based on the foregoing, a preliminary injunction requiring the City to turn over to the  
4 District all Fiduciary Funds should be granted. In the alternative, as set forth below, the District  
5 requests the appointment of a receiver to administer the Fiduciary Funds along with all net  
6 revenue that exceeds 120% of the District's share of the City's bond payment obligation.

7 **B. IF THE COURT DECLINES TO ISSUE A THE PRELIMINARY**  
8 **INJUNCTION, COURT SHOULD APPOINT A RECEIVER TO**  
9 **OVERSEE THE USE / DISBURSEMENT OF THE CITY-HELD**  
10 **DISTRICT FUNDS.**

11 In the event the court declines to issue the requested preliminary injunction, a receiver  
12 should be appointed, pursuant to *Code of Civil Procedure* § 564 (b)(9), to oversee the use  
13 disbursement of District funds. Section 564 states in part as follows:

14 (a) A receiver may be appointed, in the manner provided in  
15 this chapter, by the court in which an action or proceeding is  
16 pending in any case in which the court is empowered by law to appoint  
17 a receiver.

18 (b) A receiver may be appointed by the court in which an action or  
19 proceeding is pending, or by a judge thereof, in the following  
20 cases:

21 . . . .  
22 (9) In all other cases where necessary to preserve the property or  
23 rights of any party."

24 A "receiver may not be appointed except in the classes of cases expressly set forth in  
25 the statutes." (Marsch v. Williams (1994) 23 Cal.App.4th 238, 246.) "The principal source of  
26 authority to appoint a receiver is CCP section 564 which is supplemented by additional code  
provisions." (Id. at pp. 245-246; see also Barclays Bank of California v. Superior Court (1977)  
69 Cal.App.3d 593, 597.) In the present case *Code of Civil Procedure* § 564 (a)(9) provides the  
necessary authority to appoint a receiver ("in all other cases where necessary to preserve the

1 property or rights of any party"). It is necessary to appoint a receiver to oversee the use /  
2 disbursement of District funds because the City has refused to transfer the funds to the District  
3 for its lawful uses, as described above, and has failed to provide an accounting of District funds.  
4 (F. McMichael Decl. ¶ 31, Exh. 5 § 4.5.) In addition, the City's control over District funds is  
5 interfering with the ability to fully pursue this litigation against the City.

6 "The power to appoint a receiver is a delicate one which is exercised sparingly and with  
7 caution, and only in an extreme case under such circumstances as demand or require summary  
8 relief, and never in a doubtful case or where there is no necessity or occasion for the  
9 appointment." (*Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 350.) Because of the  
10 drastic nature of receiverships, "[o]rdinarily, if there is any other remedy, less severe in its  
11 results, which will adequately protect the rights of the parties, a court should not take property  
12 out of the hands of **its owners**." (*Golden State Glass Corp. v. Superior Ct.* (1939) 13 Cal.2d  
13 384, 393, emphasis added.)

14 In this case, the District's right to use and access **its money** is being infringed by the  
15 City. The District maintains the legal and contractual right to use its funds for all lawful  
16 purposes and, further, it requires use of the funds in question to continue to pursue this action  
17 against the City. Allowing the City to control the funds under these circumstances is unjust and  
18 inequitable. The District has tried less drastic measures to obtain access to the funds in  
19 question, but has been turned down by the City at every step.

20 If the District's request for a preliminary injunction is denied, then a receiver should be  
21 appointed to handle such funds. If nothing else, it is patently unfair and inequitable to allow the  
22 City to hold the District's purse strings in this litigation.

23 Finally, section 564 does not limit a receiver's authority upon appointment and there is  
24 nothing in that statute restraining a court from limiting the receiver's power. Therefore, if a  
25 receiver is appointed, the District requests that the receiver's roll be limited to overseeing the

1 collection of the District's net revenues and payment of the District's allocated share of annual  
2 costs pursuant to the PARTICIPATION AGREEMENT, as amended.


3 **IV. CONCLUSION**

4 The City holds over seven million dollars of District funds. It has refused several  
5 requests to transfer these funds to the District. The City's conduct prevents the District from  
6 using those funds for lawful purposes.

7 The City's conduct, if not restrained, will irreparably harm the District. Consequently,  
8 the court should issue a preliminary injunction requiring the City to transfer the funds in  
9 question to the District's account with Mendocino County. Alternatively, the court should  
10 appoint a receiver to oversee and manage the funds that are held and controlled by the City.

11  
12 Dated: November 24, 2015

LAW OFFICE OF DUNCAN M. JAMES

13  
14   
15 DOUGLAS V. LOSAK  
16 Attorney for Ukiah Valley Sanitation  
17 District