

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and regulations.
  - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A.

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability

policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.

- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

##### A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

##### B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
- 3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

## 6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

## 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

## 6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

## 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or

destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence*: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver*: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

- A. *Notices*: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival*: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability*: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver*: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement. One or more waivers by either party of any provision, term, condition or covenant shall not be constructed as a waiver of a subsequent breach of the same by the other party.
- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:

1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Reserved.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

### 8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

### 8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer’s and Owner’s representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:  
\_\_\_\_\_

Engineer:  
\_\_\_\_\_

By: **Ron Henrickson**

By: **William F. Ettlich**

Title: **City Manager**

Title: **Senior Vice President**

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Engineer License or Firm's Disclosure Only  
Certificate No. \_\_\_\_\_

State of: California

Address for giving notices:

Address for giving notices:

**675 Wildwood Avenue**

**2365 Iron Point Road**

**Rio Dell, CA 95562**

**Suite 300**

**Folsom, CA 95630**

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

**Ron Henrickson**

**Craig A. Olson**

Title: **City Manager**

Title: **Project Manager**

Phone Number: **(707) 764-3532**

Phone Number: **(916) 817-4889**

Facsimile Number: **(707) 764-5480**

Facsimile Number: **(916) 817-4747**

E-Mail Address: **cm@riodellcity.com**

E-Mail Address: **Craig.Olson@hdrinc.com**

This is **EXHIBIT A**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

INSERT SCOPE OF WORK

### **PART 2 – ADDITIONAL SERVICES**

INSERT SCOPE OF WORK

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests, including but not limited to the review of Contract Documents supplied by Engineer.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties,

responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services, as defined in Exhibit A.

This is **EXHIBIT C**, consisting of 1 page, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated December 7, 2010.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

*C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$ \_\_\_\_\_ based on the following estimated distribution of compensation:
  - a. Project Management and QA/QC \$
  - b. Permit Renewal Assistance \$
  - c. Predesign Services \$
  - d. Detailed Design \$
  - e. Bidding Services \$
  - f. Permitting Services \$
  - g. SRF Funding & Rate Increase Analysis Assistance \$
2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **EXHIBIT D**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

## **Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

### D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
  1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
  3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
  4. *Liaison:*

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
- a. Record date of receipt of Samples and approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
9. *Inspections, Tests, and System Start-ups:*
- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
14. *Completion:*
  - a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
  - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
  - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

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NOTICE OF ACCEPTABILITY OF WORK

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PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

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To:

\_\_\_\_\_   
 Owner

And To:

\_\_\_\_\_   
 Contractor

From:

\_\_\_\_\_   
 Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_, and the terms and conditions set forth in this Notice.

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

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

Dated: \_\_\_\_\_

## CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

**Reserved**

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Page 1

(Exhibit F – Reserved)

EJCDC E-500 Agreement Between Owner and Engineer for Professional Services.

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## **Insurance**

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Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

### G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- |                                                                                      |             |
|--------------------------------------------------------------------------------------|-------------|
| a. Workers' Compensation:                                                            | Statutory   |
| b. Employer's Liability --                                                           |             |
| 1) Each Accident:                                                                    | \$1,000,000 |
| 2) Disease, Policy Limit:                                                            | \$1,000,000 |
| 3) Disease, Each Employee:                                                           | \$1,000,000 |
| c. General Liability --                                                              |             |
| 1) Each Occurrence (Bodily Injury and Property Damage):                              | \$1,000,000 |
| 2) General Aggregate:                                                                | \$1,000,000 |
| d. Excess or Umbrella Liability --                                                   |             |
| 1) Each Occurrence:                                                                  | \$1,000,000 |
| 2) General Aggregate:                                                                | \$1,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |             |
| Each Accident                                                                        | \$1,000,000 |
| f. Professional Liability --                                                         |             |
| 1) Each Claim Made                                                                   | \$1,000,000 |
| 2) Annual Aggregate                                                                  | \$1,000,000 |

2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

### H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by the American Arbitration Association. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

## **Limitations of Liability**

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

A. *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$1,000,000.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

- B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project,

provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

**Special Provisions**

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Paragraph(s) of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated December 7, 2010.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. \_\_\_\_\_**

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: \_\_\_\_\_
- b. Owner: \_\_\_\_\_
- c. Engineer: \_\_\_\_\_
- d. Project: \_\_\_\_\_

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

*[List other Attachments, if any]*

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_
- c. This amendment amount: \$ \_\_\_\_\_
- d. Adjusted Agreement amount: \$ \_\_\_\_\_

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is \_\_\_\_\_.

OWNER:

ENGINEER:

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

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

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

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

Date  
Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## DRAFT 2

### EXHIBIT A SCOPE OF WORK

#### Owner of Rio Dell *Wastewater Treatment Plant Upgrade Project*

The following scope of work outlines the proposed professional engineering services to be provided by HDR Engineering, Inc., (ENGINEER) for the design of the wastewater treatment plant upgrade project. The Owner of Rio Dell's (Owner's) wastewater treatment plant will be designed to provide a rated capacity of 0.9 mgd. The wastewater treatment plant will utilize an activated sludge process with nitrification and denitrification capability, followed by existing chlorination/dechlorination prior to discharge. The existing primary clarifiers, aerobic digesters, and secondary clarifiers will be converted to influent flow equalization. In addition, the facility will be automated to allow for reduced attendance by Owner operations and maintenance (O&M) staff.

The following tasks are anticipated:

#### **TASK 100 - PROJECT MANAGEMENT AND QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)**

##### **Subtask 110 - Project Management and Coordination**

ENGINEER will provide project management from project initiation to completion of bidding phase, which will include preparing a project guide for distribution to team members, managing the schedule and budget, coordinating with subconsultants, communicating with the project team, preparing monthly progress reports to the Owner, scheduling workload of staff, and coordinating QA/QC efforts. The project guide will identify project roles and responsibilities of ENGINEER staff members and subconsultants, as well as communication protocols among ENGINEER, the Owner, and other project participants.

At the 90 percent design stage, ENGINEER will provide an estimated work effort and cost to provide construction engineering and management services for the project for Owner review.

*Deliverables: Project guide, monthly progress reports, and invoices.*

##### **Subtask 120 - QA/QC Program**

Senior ENGINEER staff not intimately involved with the design will provide QA/QC review of the technical memorandum, draft pre-design report, 50 percent design submittal, 90 percent design submittal, and construction set prior to submission to the Owner.

*Deliverables: To be incorporated into the deliverable prior to submission to the Owner.*

## DRAFT 2

### **TASK 200 - PERMIT RENEWAL ASSISTANCE**

Currently, the Owner's wastewater treatment plant has both land (Waste Discharge Requirements R1-2006-0021) and surface water discharge requirements (NPDES No.CA0022748). The current permit is subject to renew by April 1, 2012. The permit application package has been prepared by the Owner Engineer, Winzler & Kelly. ENGINEER will provide necessary assistance for the permit renewal throughout each stage of the application process.

The following subtasks are anticipated:

#### **Subtask 210 - Discussions with Regional Water Quality Control Board (RWQCB)**

The ENGINEER will participate in the meetings with North Coast RWQCB staff to discuss future potential regulatory requirement changes and their impact on the existing treatment practices, as well as the selection of treatment technologies and processes for the plant improvement project. The potential focal points of the discussion would be chlorination by-products, nitrogen removal, and California Toxics Rule (CTR) compliance. The Owner and ENGINEER will also discuss the milestone timeframe of the wastewater treatment plan upgrade project in sync with the permit renewal schedule.

Up to three meetings at RWQCB's office in Santa Rosa have been budgeted under this subtask.

*Deliverables: Meeting minutes.*

#### **Subtask 220 - Collection of Required Information**

ENGINEER will review pertinent regulatory requirements, and identify the specific information required for the wastewater treatment plant upgrade project. ENGINEER will develop a list of required information necessary for the permitting process and facility design. The list will indicate what information ENGINEER already possesses from the wastewater treatment plant upgrade project, and what additional information is required from the Owner.

If required, ENGINEER will meet with Owner staff to collect the additional information needed. The list will be submitted to the Owner at least one week prior to this meeting. Up to three meetings with Owner staff has been budgeted.

*Deliverables: List of information required from the Owner.*

#### **Subtask 230 - Coordination and Review Meetings**

ENGINEER will attend up to seven meetings, as requested by the Owner, in support of the permit renewal. These meetings can consist of working meetings, presentations to the Owner, and

## DRAFT 2

meetings with the RWQCB's staff or the RWQCB board meetings where ENGINEER is requested to represent the Owner to present the project to the RWQCB.

*Deliverables: Meeting agenda and minutes, and presentation materials.*

### TASK 300 - PREDESIGN SERVICES

#### Subtask 310 - Background Information Review

ENGINEER will review the final Facility Plan (March 2009) provided by the Owner to evaluate:

- Design criteria for the new nitrogen removal activated sludge plant. The evaluation will include, but not limited to, annual dry weather flow, peak flow with equalization, low and peak organic loadings, maximum nitrogen loadings, and other parameters that would potentially impact the nitrification/denitrification activated sludge system performance.
- The impact of the upgrade project on regulatory compliance. The evaluation will include, but not limited to, potential increase of the chlorination by-products formation due to the implementation of nitrogen removal. Chlorination by-products, such as dichlorobromomethane (DCBM), have been included in the current discharge permit and currently are required to be monitored monthly by the RWQCB.

The design criteria, individual flows and loads, biological treatment criteria, pumping sizes, and flow equalization information presented in the final Facility Plan will be re-evaluated and re-assessed.

*Deliverables: Three hard copies and one electronic (PDF) copy of the review technical memorandum summarizing review comments and recommendations.*

#### Subtask 320 - Kick-off Meeting/Site Visit

ENGINEER will visit the proposed facility site to collect existing background information, examine site constraints, and review any improvements contemplated by Owner staff. Attachment A-1 shows a listing of the information that will be collected from the Owner for review.

ENGINEER will also meet with Owner staff to introduce the project team.

It is assumed that the kick-off meeting and site visit will occur on the same day.

*Deliverables: Meeting minutes.*

## DRAFT 2

### Subtask 330 - Code Compliance Review

ENGINEER will perform a code compliance review and proposed of existing facilities, particularly as it pertains to Occupational Safety and Health Administration (OSHA) compliance, and determine what new facilities will be needed as part of the upgrade project (e.g., eye wash and shower facilities).

*Deliverables:* To be incorporated into predesign report.

### Subtask 340 - Predesign Report

A brief predesign report will be prepared for the project. The predesign report will utilize information from the final Facility Plan (March 2009) provided by the Owner and ENGINEER, and will provide sizes and layouts of individual treatment processes. A site layout will also be developed.

The predesign report will also include the following:

- Results of the geotechnical report investigations and other required investigations, such as surveying, landscaping, corrosion, public input, etc., which are complete and available for incorporation into the predesign report.
- Components and systems, including flow diagram, required for the complete wastewater treatment facility. The description and layout of the recommended alternative presented in the review of facilities plan and discussion of alternatives document prepared for this project by ENGINEER will be utilized. The design criteria, individual flows and loads, biological treatment criteria, pumping sizes, and flow equalization information presented in the final Facility Plan will be re-evaluated and re-assessed.
- Executive summary and supporting sections, including utility systems, seismic considerations, controls, cathodic protection, site piping, code compliance review, and other systems, as required.
- A section describing key elements necessary to implement the design and construction, including construction sequencing requirements, updated project schedule, estimate of probable construction cost, preliminary list of drawings, and preliminary table of contents for technical specifications.

*Deliverables:* Five copies of the draft and final predesign reports.

### Subtask 350 - Predesign Report Review Meeting

Following submittal of the draft predesign report for Owner review, ENGINEER will review the recommendations and discuss comments with the Owner staff during a review meeting. The draft report shall be revised to incorporate pertinent comments.

## DRAFT 2

*Deliverables: Meeting agenda and minutes.*

### TASK 400 - DETAILED DESIGN

ENGINEER will prepare special conditions and additional technical specifications of the recommended improvements for Owner review and approval. The Owner's general contract documents (front-end) and standard specifications will be used. It is anticipated that the wastewater treatment plant will consist of the following:

- **Pre-Engineered Biological Treatment Facility:** It was recommended that this facility will utilize a pre-engineered treatment system to reduce cost. The treatment structure will consist of aeration basins, anoxic zones, aerobic digesters, and splitter boxes. ENGINEER will obtain design information from up to three manufacturers of this type of equipment. ENGINEER will work closely with existing Owner wastewater treatment plant operations staff to ensure the proper technology is selected.
- **Electrical/Blower Building:** As part of the new biological treatment facility, a new aeration system blower building will be required. This building will be masonry constructed, and be approximately 960 square feet in size (24 feet by 40 feet) overall. It will consist of two separate rooms, one for electrical equipment and another for the aeration blowers. This building will be located adjacent to the new biological treatment facility.
- **Influent Flow Equalization:** The existing primary clarifiers, aerobic digesters, and secondary clarifiers will be converted to influent flow equalization storage. After the new wastewater treatment plant is constructed, the existing structures will be cleaned and modified.
- **Effluent Pumping:** New submersible pumps will be installed in the existing chlorine contact basin effluent sump to pump effluent to the disposal site. The electrical components for these new pumps will be constructed above the 100-year floodplain. These pumps will be sized to pump the effluent flows from April 15th through October 15th. *May 15th and Oct. 1st or when I have 100 to 1 dilution in 1*
- **Effluent Disposal Pipeline:** Approximately 13,500 linear feet (LF) of new pipeline will be constructed to transport the treated wastewater from the wastewater treatment facility to the effluent disposal site. California Department of Transportation (Caltrans) has disallowed the construction of the pipeline along their right-of-way. Thus, the pipeline alignment will mostly follow the Davis Street, Rigby Avenue, Painter Street, Riverside Drive, and Eeloa Avenue route. Most of the pipeline will be constructed using trenchless technologies, such as horizontal directional drilling (HDD) and microtunneling.
- **Effluent Disposal Site:** The Owner is acquiring a 35-acre parcel of property for effluent disposal. This site will be utilized for effluent disposal. This will include a spray irrigation system and tailwater return pumping system.

## DRAFT 2

- **New Standby Generator:** The existing diesel standby generator is outdated, unreliable, and does not meet current emissions requirements. A new diesel standby generator with outdoor weather-proof enclosure and built-in base fuel storage tank will be installed. The existing standby generator will be removed and disposed of by the contractor.
- **Site Electrical Distribution System Modifications:** The existing electrical service and electrical equipment is obsolete and will be replaced with a new service. ENGINEER will perform a load study to size the new service and equipment. It is anticipated that the new service will be located in an electrical room as part of the proposed Aeromod blower building. New electrical service and distribution equipment will be installed in this building. The new outdoor standby diesel generator with built-in base fuel storage tank will be installed adjacent to the electrical service room. Primary service will be brought from the existing Pacific Gas & Electric (PG&E) take-off point or a closer point, if available, and run to a pad-mounted service transformer adjacent to the electrical service room. Sub-feed circuits will be run to pick up existing load centers in the plant, which are now fed out of the existing electrical building. ENGINEER will attempt to free up as much space in the existing electrical building as possible so the building is available for other uses in the future. The electrical system in areas impacted by construction will be brought up to current 2010 California Building Code.
- **Control and SCADA:** Controls as required for the Aeromod process will be a part of the design. A new remote terminal unit (RTU) will be added to tie this process into the existing plan SCADA, or ENGINEER will tie it into an existing RTU. Screen(s) will be added to the existing SCADA as needed for the added process.
- **Office and Locker Facilities:** ENGINEER will modify the existing masonry generator pumping building to provide for new office space and locker/shower facilities. The existing generator and pumps will be demolished and removed.

Attachment A-2 shows the preliminary sheet list anticipated for this project. Specific subtasks required to complete the detailed design are described below.

### **Subtask 410 - Surveying**

ENGINEER will utilize existing aerial mapping information of the wastewater treatment plant site provided by the Owner.

Additional ground survey work required for the pipeline portion of the project, and will supplement the aerial mapping survey completed by the Owner. The Owner will provide survey control information used in the Owner-provided mapping prior to commencement of work.

ENGINEER's subconsultant will perform spot surveys of the project. The survey will include survey of existing utility's USA paint marks, utility surface features, such as sewer manhole lid, television cable pin flags, sewer cleanout, storm drain drop inlets, poles, etc. The survey will also include spot elevation checks as needed for the design purpose.

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*Deliverables: Base map suitable for design.*

### **Subtask 420 - 50 Percent Design Submittal**

ENGINEER will prepare drawings to the 50 percent stage of completion, which will include civil and mechanical drawings, and some structural, architectural, electrical, and instrumentation and control drawings. The submittal will also include flow and process diagram, sizing and load calculations, major equipment specifications, and opinion of probable construction cost. We have included limited survey for existing utilities USA marks and surface utilities. We understood that the project's environmental impact report (EIR) document is complete and is available to ENGINEER.

*Deliverables: Five copies of 50 percent drawings (half size {11" x 17"}), major equipment specifications, and opinion of probable construction cost.*

### **Subtask 430 - 50 Percent Design Review Meeting**

The 50 percent design submittal will be submitted to the Owner for review and comment, and will be discussed during a progress/review meeting. Owner building and electrical officials may participate in this stage of the process at the discretion of the Owner.

*Deliverables: Meeting agenda and minutes.*

### **Subtask 440 - 90 Percent Design Submittal**

After incorporation of Owner comments received from the 50 percent submittal, ENGINEER will prepare the 90 percent design submittal. The 90 percent submittal will include all drawings, draft project manual (specifications), and opinion of probable construction cost. ENGINEER will submit plans and specifications to the Department of Water Resources (DWR) for review to obtain final approval of State Revolving Fund (SRF) funding.

*Deliverables: Five copies of 90 percent drawings (half size), specifications (draft project manual), and opinion of probable construction cost.*

### **Subtask 450 - Third Party Review of 90 Percent Plans**

ENGINEER will coordinate with an outside consultant, to be selected by the Owner, for third party review of 90 percent design plans.

*Deliverables: PDF copy of 90 percent design documents to the Owner's consultant.*

## DRAFT 2

### **Subtask 460 - Value Engineering (VE) Coordination/Constructability Review**

A VE/constructability review will be conducted by K.G. Walters Construction Company, Inc., at the 90 percent design stage. ENGINEER will participate in the VE workshop, and provide 90 percent design documents to participants, and will provide comments on VE review.

*Deliverables: PDF copy of 90 percent design documents to VE participants.*

### **Subtask 470 - 90 Percent Design Review Meeting**

The 90 percent design submittal will be submitted to the Owner for review and comment. Owner comments on the 90 percent design submittal will be discussed during a progress/review meeting.

*Deliverables: Meeting agenda and minutes.*

### **Subtask 480 - 100 Percent Design Submittal**

Following receipt of the Owner's comments on 90 percent design submittal and State's bid review, ENGINEER will distribute final plans and specifications to potential bidders. The master drawings will be prepared on vellum, and electronic files will be provided in AutoCAD format. The master project manual will be prepared on 8.5" x 11" sheets and electronic files will be provided in Microsoft Word format.

*Deliverables: One master set and three bound copies of the final calculations, half-size and full-size (22" x 34") drawings, and project manual for the Owner. One PDF copy of the 100 percent opinion of probable construction cost.*

## **TASK 500 - BIDDING SERVICES**

### **Subtask 510 - Advertisement Assistance**

ENGINEER will prepare a notice inviting bids for contractors. The notice will be prepared in the format that it is ready for publication. ENGINEER will send notice to builders exchanges and contractor publications. Owner will pay for publication in local paper(s).

### **Subtask 520 - Prebid Meeting**

ENGINEER will facilitate a prebid meeting at the project site.

### **Subtask 530 - Bidder's Questions/Addenda**

ENGINEER will respond to questions from contractors during the bidding phase, and prepare up to two addenda on the project.

## DRAFT 2

*Deliverables:* Written responses and addenda (up to two).

### **Subtask 540 - Review Bids**

ENGINEER will check bidder submittals, prices, price extensions, and totals and prepare recommendation and information for submittal to SRF and Owner. ENGINEER will also check validity of contractor's license with State Contractors Board.

### **Subtask 550 - Construction Set**

ENGINEER will incorporate the addenda into the bid set and provide a "conformed" set of construction documents for reproduction and distribution by the Owner.

*Deliverables:* One original signed and stamped set of the construction specifications and full-size drawings, and CD containing PDF and AutoCAD files of the construction contract documents.

## **TASK 600 - PERMITTING SERVICES**

### **Subtask 610 - Caltrans Encroachment Permit**

Since the pipeline will cross Highway 101 and Eel River through Caltrans Bridge 4-16 (south bound 101), working with Caltrans for the encroachment permit will be very important. ENGINEER will develop construction concept and details to assist the Caltrans permitting process. ENGINEER will also attend meetings with Caltrans at Owner's request.

### **Subtask 620 - RWQCB Stormwater Runoff Discharge Associated with Construction Activities Permit**

Construction of the project will disturb an area greater than one acre. A permit is required from the RWQCB for stormwater runoff associated with construction activities. ENGINEER will assist the Owner with the permit application by providing related project information. As required by the RWQCB, the Owner's Legally Responsible Person (LRP) will submit the application on-line through RWQCB's SMART system. An ENGINEER subconsultant will prepare the project's storm water pollution prevention plan (SWPPP) to assist the permitting process.

### **Subtask 630 - U.S. Army Corps of Engineers (USACE) and California Department of Fish & Game (CDFG) Permit Consultation**

The pipeline will cross Eel River. Even though it is anticipated that the pipeline will cross over the river through Highway 101 bridge, it is better to consult with USACE and CDFG to confirm that a permit is not necessary.

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### **Subtask 640 - California Department of Public Health (CDPH) Review**

CDPH requires certain separation between water line and sanitary sewer lines. ENGINEER will provide the effluent pipeline design plans at 50 design and 90 percent design stages for CDPH review. CDPH comments will be incorporate into the pipeline design.

### **Subtask 650 - Owner Encroachment Permit**

The construction of the effluent pipeline will encroach into Owner's public roads. ENGINEER will coordinate with the Owner for encroachment permit requirements. Requirements will be incorporated into the pipeline design.

## **TASK 700 - SRF FUNDING AND RATE INCREASE ANALYSIS ASSISTANCE**

### **Subtask 710 - SRF Funding Application Assistance**

The Owner is considering a low-interest loan and/or grant through the Clean Water SRF to fund the construction of wastewater treatment plant upgrade project. The Owner has started the application process, but needs assistance in completing the application.

ENGINEER will provide SRF assistance to the Owner, which includes determining the status of completed application items, compiling the remaining application items, interfacing with the State Water Resources Control Board (SWRCB) on behalf of the Owner, and coordinating with Owner staff in the collection of information needed for the application.

ENGINEER will meet with Owner Engineer, Winzler & Kelly, and the SWRCB to determine which application items are still outstanding. A number of documents and information is required as attachments to the SRF application and many of these items will be prepared by other consultants. Therefore, a check list of these items will be used to track the status, schedule, and responsible entity. ENGINEER will keep the check list up to date so that the Owner is aware of the application's progress. Attachment A-3 shows a preliminary SRF application checklist.

The required application documents and information will be collected and compiled by ENGINEER and submitted to the SWRCB on behalf of the Owner. Some of the documents and information will be prepared or provided by other consultants, such as the Facilities Plan Addendum to be completed by Winzler & Kelly. These documents may be submitted to the SWRCB by the preparing consultant, but will be coordinated through ENGINEER so that the check list can be updated.

Once the Owner's project has been out for bid and a contractor selected, the Owner will need to submit an Approval of Award (AOA) request to the SWRCB. ENGINEER will assist the Owner in compiling the required information for the AOA. These items are also listed on the SRF checklist and the status, schedule, and responsible entity will be tracked.

## DRAFT 2

### ATTACHMENT A-1 Request for Information

Requested Information	Status
<b>General</b>	
1. Waste Discharge Requirements (WDRs)	√ downloaded from Regional Water Quality Control Board (RWQCB) website
2. Latest Facility Master Plan Document	√ Winzler & Kelly 2009
3. Certified Environmental Impact Report (EIR) Document and Any Addenda	
4. Any RWQCB correspondences with regard to capacity or performance related issues (i.e., Cleanup and Abatement Orders, Administrative Civil Liability Order, Cease and Desist Orders, etc.)	√ downloaded from RWQCB website
5. Status of State Revolving Fund (SRF) Application and Outstanding Items	
<b>Treatment Facility</b>	
1. Facility Predesign Document	√ Winzler & Kelly 2010
2. Facility As-Built Drawing Sets from previous projects, including original wastewater treatment plant construction	
3. Year 2000 to current plant influent flow (daily flow data if available) and characteristics monitoring data (i.e., ammonia, if available, preferably in electronic format)	
4. Year 2000 to current plant effluent monitoring data, preferably in electronic format	
5. Chlorine usage, typical dose; dechlorination operation, usage, and typical dose in past 12 months	
6. Influent pump operation record (past three years hourly pumping rates if available, maximum capacity)	
7. Geotechnical reports prepared for the wastewater treatment plant and water treatment plant site	
8. Current site survey (mapping), in electronic format if possible	
<b>Effluent Disposal Pipeline</b>	
1. Digital CAD files of the as-built drawings (including North of Davis Road segment, which were eliminated from as-built) of the Owner's water transmission main and tank replacement project (2006), which contains the following: <ul style="list-style-type: none"> <li>a. Digital aerial photos (in TIFF format) with embedded coordinates</li> </ul>	Owner Public Works Manager to obtain from Winzler & Kelly

## DRAFT 2

Requested Information	Status
<ul style="list-style-type: none"> <li>b. Digital topographical surveys (in CAD format)</li> <li>c. Digital parcel map that shows the right-of-way line and parcel boundaries</li> <li>d. Existing utility information (in CAD format) from Owner's water transmission main and tank replacement project (2006)</li> </ul>	
2. Geotechnical report or study from the Owner's water transmission main and tank replacement project (2006)	
3. Caltrans permitting documents, including Highway 101 bridge record drawings received from Caltrans	Caltrans contacted ENGINEER on 12/1/2010. Caltrans will provide record drawings to ENGINEER. The drawings may not be the most current information. Having photos of the existing utilities inside the bridge will help (see Item 5 below).
4. The Owner's geographic information system (GIS) and existing topographical drawings of the entire Owner.	Owner Public Works Manager to provide to ENGINEER
5. Photos of existing utilities inside bridge.	Owner Public Works Manager offered to provide this to ENGINEER.
<b>Effluent Disposal</b>	
1. Discharge: up-to-date California Toxics Rule (CTR) monitoring data (i.e., dichlorobromomethane, copper, cyanide, and MtBE)	
2. Land irrigation: groundwater monitoring information (i.e., groundwater monitoring well location, and water quality results in past three years)	

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**ATTACHMENT A-2  
Preliminary Sheet List**

# DRAFT

## Attachment A-2. Preliminary Sheet List

No.	Sheet No.	Drawing Description
<b>General</b>		
1	G-1	Cover Sheet and Location Maps
2	G-2	Sheet List
3	G-3	Process Flow Diagram
4	G-4	Hydraulic Profile and Design Criteria
5	G-5	Standard Details – Division 2 through 4
6	G-6	Standard Details – Division 5 through 14
7	G-7	Standard Details – Division 15-1
8	G-8	Standard Details – Division 15-2
9	G-9	Standard Details – Division 15-3
10	G-10	Standard Details – Pipe Supports
<b>Civil</b>		
11	C-1	Plant Site Demolition Plan
12	C-2	Plant Site Paving and Grading Plan
13	C-3	Plant Site Yard Piping Plan
14	C-4	Plant Site Sections
15	C-5	Plant Site Piping Profiles
16	C-6	Standby Generator Area Plan, Sections and Details
17	C-7	Effluent Force Main Overall Plan and Profile Sheet Index
18	C-8	Effluent Force Main Plan & Profile Sta 0+00 to 13+50
19	C-9	Effluent Force Main Plan & Profile Sta 13+50 to 27+00
20	C-10	Effluent Force Main Plan & Profile Sta 27+00 to 40+50
21	C-11	Effluent Force Main Plan & Profile Sta 40+50 to 54+00
22	C-12	Effluent Force Main Plan & Profile Sta 54+00 to 67+50
23	C-13	Effluent Force Main Plan & Profile Sta 67+50 to 81+00
24	C-14	Effluent Force Main Plan & Profile Sta 81+00 to 94+50
25	C-15	Effluent Force Main Plan & Profile Sta 94+50 to 108+00
26	C-16	Effluent Force Main Plan & Profile Sta 108+00 to 121+50
27	C-17	Effluent Force Main Plan & Profile Sta 121+50 to 135+00
28	C-18	Effluent Force Main Details within CalTrans Right of Way
29	C-19	Effluent Force Main Details within CalTrans Right of Way
30	C-20	Effluent Force Main Details I
31	C-21	Effluent Force Main Details II
32	C-22	Irrigation Site Piping Plan

# DRAFT

## Attachment A-2. Preliminary Sheet List

No.	Sheet No.	Drawing Description
33	C-23	Tailwater Pump Station Plan and Detail
34	C-24	Irrigation Site Grading and Drainage Plan
35	C-25	Irrigation Details
36	C-26	Site Details I
37	C-27	Site Details II
<b>Architectural</b>		
38	A-1	Electrical/Blower Building Plan and Sections
39	A-2	Electrical/Blower Building Exterior Elevations
40	A-3	Electrical/Blower Building Schedules and Details
<b>Mechanical</b>		
41	M-1	Mechanical Symbols
42	M-2	Electrical/Blower Building Plumbing and Drainage Floor Plan
43	M-3	Electrical/Blower Building HVAC Plan and Details
<b>Structural/Process</b>		
44	SP-1	Standard Structural Notes I
45	SP-2	Standard Structural Notes II
46	SP-3	Typical Concrete Details I
47	SP-4	Typical Concrete Details II
48	SP-5	Typical Concrete Details II
49	SP-6	Typical Masonry Details
50	SP-7	Typical Reinforcing Details
51	SP-8	Typical Metal Works I
52	SP-9	Typical Metal Works II
53	SP-10	Aeromod Facility Foundation
54	SP-11	Aeromod Facility Sectional Plan
55	SP-12	Aeromod Facility Deck Level Plan
56	SP-13	Aeromod Facility Sections I
57	SP-14	Aeromod Facility Sections II
58	SP-15	Aeromod Facility Sections III
59	SP-16	Aeromod Facility Miscellaneous Details I
60	SP-17	Aeromod Facility Miscellaneous Details II
61	SP-18	Electrical/Blower Building Foundation Plan
62	SP-19	Electrical/Blower Building Floor Plan
63	SP-20	Electrical/Blower Building - Building Sections I

# DRAFT

## Attachment A-2. Preliminary Sheet List

No.	Sheet No.	Drawing Description
64	SP-21	Electrical/Blower Building - Building Sections II
65	SP-22	Effluent Pump Station Plan and Sections
66	SP-23	Effluent Pump Station Sections and Details
<b>Electrical</b>		
67	E-1	Electrical Symbols and Legend
68	E-2	Electrical Single Line Diagram
69	E-3	Panel Schedules
70	E-4	Control Diagrams I
71	E-5	Control Diagrams II
72	E-6	Electrical Site Plan
73	E-7	Electrical Duct Bank Schedule, Conduit Schedule and Pullbox Schedule
74	E-8	Existing Electrical Building Plan
75	E-9	Effluent Pump Station Area Electrical Plan
76	E-10	Electrical/Blower Building Lighting and Power Plans
77	E-11	Aeromod Facility Electrical Plan
78	E-12	Irrigation Site Electrical Site Plan
79	E-13	Electrical Details I
80	E-14	Electrical Details II
81	E-15	Electrical Details III
82	E-16	Electrical Details IV

**DRAFT 2**

**ATTACHMENT A-3  
Preliminary SRF Application Checklist**

CITY OF RIO DELL  
SRF APPLICATION (C-06-7401-110) CHECK LIST

Item	Forms Needed	Winzler-Kelly Comments Regarding Current Status (as of November 15, 2010)	Submittal to SWRCB	Schedule / Priority	Comments
<b>APPLICATION</b>					
Application Form	<ul style="list-style-type: none"> <li>* FAAST (online) PIN No.</li> <li>* SWRCB Assigned Project No.</li> <li>* Federal ID number</li> <li>* Identify Authorized Representative</li> <li>* Project construction start date</li> <li>* RWQCB and WDR permit no.</li> <li>* Project status (planning underway, planning complete, other)</li> <li>* Estimate capital costs and cost sharing (SWRCB, Applicant, Other)</li> <li>* Sources of funds for capital costs and estimated disbursement projections</li> <li>* Water Rights - petition filed, yes/no?</li> <li>* Has all necessary land or right-of-way been acquired, yes/no?</li> <li>* Authorized Representative signature</li> </ul>	<p>Done</p> <p>C-06-7401-110 SWRCB should have</p> <p>Done</p> <p>See Attachment 8</p> <p>See Attachment 9</p> <p>Needs to be submitted? SWRCB should know status.</p> <p>See Attachment 7</p> <p>See Attachment 7</p> <p>See Attachment 4B</p> <p>See Attachment 11A</p> <p>See Attachment 4A</p>			
Attachment 1	<p><b>Project Description</b></p> <ul style="list-style-type: none"> <li>* Provide brief description of project</li> </ul>	No additional submission required, covered in Facility Plan and addendum.			
Attachment 2	<p><b>Sources of Funds for Capital Costs</b></p> <ul style="list-style-type: none"> <li>* Attachment 2A – estimated annual disbursement schedule (SWRCB template available)</li> <li>* Attachment 2B – explanation of sources of funds for capital costs</li> </ul>	<p>Still Needed</p> <p>Still Needed</p>			
Attachment 3	<p><b>Legal Authority</b></p> <ul style="list-style-type: none"> <li>* Submit a legal opinion, including legal citations, addressing the following issues: <ul style="list-style-type: none"> <li>- The legal authority to enter into a financing agreement with The SWRCB</li> <li>- Cite the statute or legal citations that authorizes the applicant to enter into a financing agreement</li> <li>- Provide contact info for the applicant's legal counsel for follow up questions from SWRCB's legal counsel</li> <li>- Any requirements that the applicant hold an election before entering into a financing agreement with the SWRCB</li> <li>- If election is required, state the date held or the date scheduled</li> </ul> </li> </ul>	Previously submitted, on file with SWRCB, from Solids Project			
Attachment 4A	<p><b>Application Authorization (Authorizing Resolution)</b></p> <ul style="list-style-type: none"> <li>* Certified copy of Authorized Representative Resolution adopted by the applicant's Board or Council (SWRCB template available)</li> </ul>	Previously submitted, on file with SWRCB			
Attachment 4B	<p><b>Water Rights</b></p> <ul style="list-style-type: none"> <li>* Written determination from the Division of Water Rights regarding whether a petition must be filed or no further action is required <ul style="list-style-type: none"> <li>- No water rights petition required - Submit documentation</li> <li>- Water rights petition required - Submit copy of water rights petition</li> </ul> </li> </ul>	Request in to Division of Water Rights for final determination, no need for petition anticipated.			
Attachment 5	<p><b>Project Report / Facilities Planning Document</b></p> <ul style="list-style-type: none"> <li>* Statement of project needs and benefits (incl. water quality benefits, public health/water quality problems to be corrected)</li> <li>* Total capital costs</li> <li>* Discussion of existing and projected flows and loads used to estimate the capacity needs</li> <li>* For selected alternative: <ul style="list-style-type: none"> <li>- Description of alternative and complete system of which it is a part of</li> <li>- Design criteria (flows, loads, etc.)</li> <li>- Copy of WDR or tentative WDR</li> </ul> </li> <li>* Median household income and population of service area</li> <li>* Total number of active wastewater service connections currently and directly served</li> <li>* Breakdown of connections by category (residential, commercial, etc.)</li> <li>* Map of existing service area for proposed project</li> <li>* Current monthly wastewater charges by category</li> <li>* Cost effectiveness evaluation of alternatives over useful life of project (evaluation must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality and a regional treatment solution)</li> <li>* Climate change (Greenhouse Gases) evaluation of alternatives over useful life of project (evaluation must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality and a regional treatment solution)</li> </ul>	<p>Addendum Submitted on 11/12/2010</p> <p>Need to Submit Evaluation of "Livability Principals" Document</p>			

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Item	Forms Needed	Winzler-Kelly Comments Regarding Current Status (as of November 15, 2010)	Submittal to SWRCB	Schedule / Priority	Comments
	<ul style="list-style-type: none"> <li>* An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process</li> <li>* An evaluation of the non-existence or possible existence of excessive I/I in the existing sewer system.</li> <li>* If average daily flow during periods of sustained high groundwater is less than 120 gallons per capita per day (gpcd), a Sewer System Evaluation Survey (SSES) is not required. If it is above 120 gpcd, a SSES must be performed to determine if it is cost effective to treat or correct I/I. If SSES is not submitted, funding will be based on 120 gpcd.</li> <li>* If the peak flow during a storm event (highest 3-hr ave) exceeds 275 gpcd a SSES must be completed or funding will be based on 275 gpcd.</li> <li>* Annual operation and maintenance costs</li> <li>* Discussion of existing and projected population</li> <li>* Discussion of anticipated eligible capacity for the project and how that capacity was derived</li> <li>* Summary of public participation</li> <li>* For selected alternative: <ul style="list-style-type: none"> <li>- Construction and O&amp;M costs</li> <li>- How construction and O&amp;M costs will be funded</li> <li>- Cost impacts on wastewater users</li> <li>- Projected monthly rates by user category and basis of charges during useful life of project</li> <li>- Ineligible project costs and non-project-related costs imposed on users over next five years</li> <li>- Income generated by sale of recycled water</li> <li>- Summary of significant environmental impacts and mitigation measures</li> <li>- Source and amount of unallocated potable water available. If there is a deficiency, a plan to mitigate shall be presented.</li> <li>- Facilities previously funded by federal/state grants, loans, or other financing, if these facilities are to be repaired or replaced</li> <li>- O&amp;M requirements</li> <li>- Demonstrate alternative is consistent with any applicable approved water quality management plan</li> <li>- Summary of public participation</li> </ul> </li> <li>* Description of how project addresses the state planning priorities defined in Section 65041.1 of the Government Code and sustainable water resource management priorities</li> </ul>	<p><b>Need to determine how to proceed with SSES and address \$Funding/ flow limits</b></p>			
Attachment 6	<p><b>Environmental Review</b></p> <ul style="list-style-type: none"> <li>* If Project is covered under a <b>CEQA Categorical or Statutory Exemption</b>, submit the following: <ul style="list-style-type: none"> <li>- Notice of Exemption filed with the Governor's Office of Planning and Research</li> <li>- List of Best Management Practices (BMPs) and their locations (if project implements BMPs)</li> <li>- Map of project area</li> </ul> </li> <li>- Complete CWSRF Evaluation Form for Environmental Review and Federal Coordination <ul style="list-style-type: none"> <li>- Federal Endangered Species Act, Section 7</li> <li>- National Historic Preservation Act, Section 106</li> <li>- Clean Air Act</li> <li>- Coastal Zone Management Act</li> <li>- Farmland Protection Policy Act</li> <li>- Flood Plain Management - Executive Order Number 11988</li> <li>- Migratory Bird Treaty Act</li> <li>- Protection of Wetlands - Executive Order Number 11990</li> <li>- Wild and Scenic Rivers Act</li> </ul> </li> <li>* If Project is covered under a <b>Negative Declaration</b>, submit the following: <ul style="list-style-type: none"> <li>- Draft and Final Initial Study/Negative Declaration (IS/ND)</li> <li>- All comments received during review period and the responses to those comments</li> <li>- A copy of the adopted mitigation monitoring and reporting program</li> <li>- Resolution approving CEQA documents (adopting IS/ND and making CEQA findings)</li> <li>- Any notices of any hearings or meetings held regarding environmental review</li> <li>- A copy of the Notice of Determination (NOD) filed with the Governor's Office of Planning and Research, State Clearinghouse</li> </ul> </li> </ul>	<p><b>All items completed and submitted to SWRCB except those highlighted below:</b></p>			





Item	Forms Needed	Winzler-Kelly Comments Regarding Current Status (as of November 15, 2010)	Submittal to SWRCB	Schedule / Priority	Comments
	<ul style="list-style-type: none"> <li>- Complete CWSRF Evaluation Form for Environmental Review and Federal Coordination</li> <li>- Federal Endangered Species Act, Section 7</li> <li>- National Historic Preservation Act, Section 106</li> <li>- Clean Air Act</li> <li>- Coastal Zone Management Act</li> <li>- Farmland Protection Policy Act</li> <li>- Flood Plain Management - Executive Order Number 11988</li> <li>- Migratory Bird Treaty Act</li> <li>- Protection of Wetlands - Executive Order Number 11990</li> <li>- Wild and Scenic Rivers Act</li> </ul>				
	<ul style="list-style-type: none"> <li>* If Project is covered under an <b>Environmental Impact Report (EIR)</b>, submit the following:</li> <li>- Draft and Final EIR</li> <li>- All comments received during review period and the responses to those comments</li> <li>- A copy of the adopted mitigation monitoring and reporting program</li> <li>- Resolution approving CEQA documents (certifying and adopting EIR, making CEQA findings, and adopting of Overriding Considerations for any adverse impact(s) that cannot be avoided or fully mitigated if project is implemented)</li> <li>- Any notices of any hearings or meetings held regarding environmental review</li> <li>- A copy of the Notice of Determination (NOD) filed with the Governor's Office of Planning and Research, State Clearinghouse</li> </ul>				
	<ul style="list-style-type: none"> <li>- Complete CWSRF Evaluation Form for Environmental Review and Federal Coordination</li> <li>- Federal Endangered Species Act, Section 7</li> <li>- National Historic Preservation Act, Section 106</li> <li>- Clean Air Act</li> <li>- Coastal Zone Management Act</li> <li>- Farmland Protection Policy Act</li> <li>- Flood Plain Management - Executive Order Number 11988</li> <li>- Migratory Bird Treaty Act</li> <li>- Protection of Wetlands - Executive Order Number 11990</li> <li>- Wild and Scenic Rivers Act</li> </ul>				
	<ul style="list-style-type: none"> <li>* Additional documentation requested by the SWRCB</li> <li>- Updated Evaluation Form for Federal Cross-Cutters</li> <li>- Updated Project Specific Air Emissions</li> <li>- Current USFWS species list</li> <li>- Analysis on the potential for occurrence and impacts to federal special status species, as well as birds listed under the migratory Bird Treaty Act</li> </ul>	Need to be completed and submitted			
Attachment 7	<b>Credit Review</b> <ul style="list-style-type: none"> <li>* Estimated project construction and annual O&amp;M costs</li> <li>* A description of the anticipated manner in which all the costs will be financed</li> <li>* Median Household Income (MHI) and population for the proposed Project service area using census data or the most recent income survey if the census data does not accurately reflect the community's MHI</li> <li>* Description of project, project location and a map of existing service area;</li> <li>* Statement of Project needs and benefits, including a discussion of the water quality benefits of the Project and the public health or water quality problems to be corrected.</li> <li>* Active wastewater service connections that are currently and directly served by the wastewater collection system. This includes a breakdown by each category for all domestic or residential, industrial, commercial and other connections.</li> <li>* Currently monthly residential service charges. The rate should reflect direct wastewater charges plus any other fees or charges that support the wastewater service such as parcel fees, standby charges, wastewater taxes, and surcharges.</li> <li>* Provide the average projected monthly wastewater charges that will be passed on to wastewater users by category and the basis of the charges during the useful life of the proposed Project. Include any ineligible project costs as well as non-Project-related wastewater system costs that will be imposed on the residential users during the next five years.</li> <li>* Proposition 218 and Pledged Revenue Legal Opinion</li> </ul>	Document submitted, waiting on comments from SWRCB			

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Item	Forms Needed	Winzler-Kelly Comments Regarding Current Status (as of November 15, 2010)	Submittal to SWRCB	Schedule / Priority	Comments
	<ul style="list-style-type: none"> <li>- If user charges may be used for repayment, please submit letter from counsel addressing the following:               <ol style="list-style-type: none"> <li>1. Date of mailing notice to ratepayers;</li> <li>2. Date of last rate-setting hearing; and</li> <li>3. Certifying that the most recent rate setting proceedings were in compliance with the substantive and procedural requirements of Proposition 218.</li> </ol> </li> <li>- For all funds used for repayment, please include in the letter from counsel the following information:               <ol style="list-style-type: none"> <li>4. Citations to the relevant laws authorizing use of such funds and any conditions, and</li> <li>5. Information about whether any pre-conditions to such use (election, etc.) has occurred.</li> </ol> </li> <li>- Also submit for the most recent Proposition 218 rate process, the number of rate payers noticed and number of protests received either in writing or at a public hearing. If applicant is still working on a rate increase, provide a schedule of key events and the details of the proposed Proposition 218 rate increase.</li> </ul>				
	<ul style="list-style-type: none"> <li>* Draft or adopted dedicated source of net revenues resolution (same as Attachment 14)</li> <li>* The applicant shall identify other sources of security, if any, the value of any such security, and whether such security is currently pledged to another financing.</li> <li>* The applicant shall provide three years of financial statements. The financial statements must include current year (if available), and two years prior (Audited financial statements are preferred).</li> <li>* The applicant shall identify any cash reserves and the planned uses of the cash reserves shown in the financial statements.</li> <li>* Please submit a completed SSO for your projects (Form provided by SWRCB). The SSO will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). Most CWSRF recipients will place and "N/A" in the box for senior debt, unless existing debt expressly precludes additional debt parity. The SSO will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.</li> <li>* The applicant shall submit a letter from the Agency's bond counsel, representing that counsel has reviewed the CWSRF financing agreement template posted online and citing relevant provisions in each of the applicant's existing debt documents listed in the SSO (including CWSRF debts), that would affect the ability of the Agency to agree to and meet its obligations under the proposed CWSRF financing agreement. The bond counsel must provide an opinion about any conditions in existing debt(s) that would affect the applicant's ability to agree to and meet its obligations under the CWSRF financing agreement (provide legal citations for reference) and whether/how those conditions have been met. If the applicant has no other debts (except other CWSRF debt) the Agency's Authorized Representative must provide a letter stating these facts</li> <li>* For all System debt (other than CWSRF debt), the applicant shall submit the relevant debt document (loan agreement, bond indenture, installment sales agreement, etc.) by either CD or paper copy. The applicant may be required to submit supplemental materials.</li> <li>* The applicant's attorney shall describe any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes, and/or adverse audit findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) related to the system, the project or the project property that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program. Particular emphasis should be placed on timeframes and potential financial exposure.</li> <li>* The applicant must describe its capital improvement plans and the long-term indebtedness needed to fund future capital improvements.</li> </ul>				
Attachment 8	<b>Project Schedule</b> <ul style="list-style-type: none"> <li>* Submit project schedule showing project milestone dates</li> </ul>	Updated Schedule needs to be submitted			
Attachment 9	<b>Regional Water Quality Control Board Requirements (WDR)</b> <ul style="list-style-type: none"> <li>* Submit adopted or tentative WDR, WRR or NPDES permit</li> </ul>	SWRCB has a copy of the existing permit. Will need to submit tentative WDR/ NPDES for new system, or letter from Regional Board stating system is permissible			
Attachment 10	<b>Authority on Property Access to Construct Project</b> <ul style="list-style-type: none"> <li>* Legal description of the site on which the project is to be constructed on</li> <li>* Opinion signed by competent title counsel describing the interest that the applicant has in the site, including information as to any easements and right-of-way and certifying that the estate or interest is legal and valid. Opinion should also include information as to whether or not:               <ul style="list-style-type: none"> <li>- Applicant has good and valid title to the entire site (excluding easements and rights-of-ways) free and clear of any pre-existing mortgages, deeds of trust, liens or other encumbrances, which would affect the value or usefulness of the site for the purpose intended</li> <li>- Certifying that the applicant has sufficient property rights in the land use for all portions of the Project to enable it to access, construct, operate, maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or CWSRF financing term, whichever period is longer</li> <li>- Any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded or filed for record whenever necessary</li> <li>- The applicant has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601)</li> </ul> </li> </ul>	Needs to be submitted			
Attachment 11 A	<b>Real Property Acquisition</b> <ul style="list-style-type: none"> <li>* Status of land or right-of-way acquisitions</li> </ul>	Needs to be submitted			
Attachment 11 B	<b>Agreements with Other Parties</b> <ul style="list-style-type: none"> <li>* List all agreements and approvals needed for implementation of the project. Submit and explain status of agreements and approvals.</li> </ul>	Needs to be submitted			

Item	Forms Needed	Winzler-Kelly Comments Regarding Current Status (as of November 15, 2010)	Submittal to SWRCB	Schedule / Priority	Comments
Attachment 11 C	<b>Tax Questionnaire</b> * Complete and submit tax questionnaire (Form provided by SWRCB) * Signature of authorized representative required	Previously submitted, on file with SWRCB for Solids Project			
Attachment 12	<b>Water Conservation Plan</b> * Water conservation requirements must be achieved. Submit pertinent information:  - Proof of signed Memorandum of Understanding with the California Urban Water Conservation Council - Copy of the Urban Water Management Plan submitted to the CA Department of Water Resources (see Attachment 13A) - Copy of the developed Water Conservation Program for approval by the SWRCB	2007 Waiver Request letter on File with SWRCB - City should be clear from Solids Project			
Attachment 13 A	<b>Urban Water Management Plan (UWMP)</b> * If you are a water supplier to more than 3,000 customers or supplying more than 3,000 ac-ft annually, you are required to submit an UWMP to the Dept. of Water Resources (DWR). Submit: - Copy of UWMP - Documentation showing that the UWMP has been submitted to the DWR and Water Code Section 10631.5 Best Management Practices Compliance	Rio Dell is not an Urban Water Supplier, nothing due			
Attachment 13 B	<b>Compliance with Water Metering Requirements</b> * Water Code Section 529.5 requires urban water suppliers to comply with water metering requirements to obtain state financial assistance. Please submit:  - Certification of Compliance Form (Form provided by SWRCB) - Water metering requirements or exemption	Need to submit certification City is in compliance with AB 2572 - Additional Documentation City is not an urban water supplier			
Attachment 14	<b>Dedicated Source of Net Revenue</b> * A "Dedicated Source of Net revenues" is required to repay the financing agreement. Please attach appropriate resolution or ordinance or indicate schedule to provide dedicated source of revenue. A Dedicated Source of Net revenues must be approved before a financing agreement can be issued. (Same as resolution included in Attachment 7)	Needs to be submitted			
Attachment 15	<b>Certification of Compliance with Federal Laws and Authorities (Federal Laws)</b> * Form provided by Water Board  * Signature of authorized representative required	Needs to be submitted- Additional laws added since submission for Solids Project			
Attachment 16	<b>Reimbursement Resolution</b> * Submit Reimbursement Resolution (Template provided by SWRCB)	Needs to be submitted			
Attachment 17	<b>General Plan Certification</b> * Submit General Plan Certification (Form provided by SWRCB) * Signature of authorized representative required	Needs to be submitted			

**LEGEND**

-  Council Resolution
-  Legal Opinions
-  Forms to be Signed by Authorized Representative
-  Winzler-Kelly Comments Regarding Current Status (as of November 14, 2010)

**Table 1 - Estimated Work Effort and Cost Breakdown**

City of Rio Dell

Wastewater Treatment Plant Upgrades

Task No.	Task Description	Principal/ QA/QC	Sr. Project Manager	Process Engineer	Civil Engineer	Structural Engineer	Mechanical Engineer	Electrical Engineer	Financial Specialist	CADD Tech	Project Controller	Admin/ Clerical	Total HDR Labor Hours	Dec 7 Notice to Proceed	
														Approximate % of Total Task Cost	\$
<b>Task 100 - Project Management and Quality Assurance/Quality Control (QA/QC)</b>															
110	Project Management and Coordination		20		40						34	4	98	25%	\$ 3,933
130	QA/QC Program	40	1									1	42	10%	\$ 1,410
	<b>Subtotal Task 100</b>	<b>40</b>	<b>21</b>	<b>0</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>34</b>	<b>5</b>	<b>140</b>		<b>\$ 5,343</b>
<b>Task 200 - Permit Renewal Assistance</b>															
210	Initial Discussions with RWQCB (up to 3 meetings)		1	24								16	41	33%	\$ 2,065
220	Collection of Required Information (up to 3 meetings)		1	24								16	41	33%	\$ 2,065
230	Coordination and Review Meetings (up to 7)		1	48								24	73	50%	\$ 5,762
	<b>Subtotal Task 200</b>	<b>0</b>	<b>3</b>	<b>96</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>56</b>	<b>155</b>		<b>\$ 9,892</b>
<b>Task 300 - Predesign Services</b>															
310	Background Information Review		1	40	84							1	126	100%	\$ 19,034
320	Kick-off Meeting/Site Visit		8	17	20			8				1	54	100%	\$ 10,285
330	Code Compliance Review		1	2	6	16	1	2				1	29		\$ -
340	Predesign Report	2	4	48	100	8	8	16		140		20	346	50%	\$ 26,617
350	Predesign Report Review Meeting		8	16	16							1	41		\$ -
	<b>Subtotal Task 300</b>	<b>2</b>	<b>22</b>	<b>123</b>	<b>226</b>	<b>24</b>	<b>9</b>	<b>26</b>	<b>0</b>	<b>140</b>	<b>0</b>	<b>24</b>	<b>596</b>		<b>\$ 55,936</b>
<b>Task 400 - Detailed Design</b>															
410	Surveying												0		\$ -
420	50 Percent Design Submittal	60	40		170	74	8	70		250		40	712		\$ -
430	50 Percent Design Review Meeting		8		6							1	15		\$ -
440	90 Percent Design Submittal	75	80		318	145	19	190		480		30	1,337		\$ -
450	Third-Party Review of 90 Percent Plans		2									1	3		\$ -
460	VE Coordination/Constructability Review		10		8							1	19		\$ -
470	90 Percent Design Review Meeting		8		6							1	15		\$ -
480	100 Percent Design Submittal	48	40		275	118	11	118		380		30	1,020		\$ -
	<b>Subtotal Task 400</b>	<b>183</b>	<b>188</b>	<b>0</b>	<b>783</b>	<b>337</b>	<b>38</b>	<b>378</b>	<b>0</b>	<b>1,110</b>	<b>0</b>	<b>104</b>	<b>3,121</b>		<b>\$0</b>
<b>Task 500 - Bidding Services</b>															
510	Advertisement Assistance		1		2							1	4		\$ -
520	Prebid Meeting		8		12							1	21		\$ -
530	Bidder's Questions/Addenda (up to two)		4		16			4		16		8	48		\$ -
540	Review Bids		1		2							1	4		\$ -
550	Construction Set	2	1		4					16		1	24		\$ -
	<b>Subtotal Task 500</b>	<b>2</b>	<b>15</b>	<b>0</b>	<b>36</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>32</b>	<b>0</b>	<b>12</b>	<b>101</b>		<b>\$ -</b>

Task No.	Task Description	Principal/ QA/QC	Sr. Project Manager	Process Engineer	Civil Engineer	Structural Engineer	Mechanical Engineer	Electrical Engineer	Financial Specialist	CADD Tech	Project Controller	Admin/ Clerical	Total HDR Labor Hours	Dec 7 Notice to Proceed	
														Approximate % of Total Task Cost	\$
<b>Task 600 - Permitting Services</b>															
610	Caltrans Encroachment Permit		8		86	40				40		10	184	80%	\$ 21,255
620	RWQCB Stormwater Runoff Discharge Associated with Construction Activities Permit		1		22							8	31		\$ -
630	USACE and CDFG Permit Consultation		1		4							4	9		\$ -
640	CDPH Review		1		4							4	9		\$ -
650	City Encroachment Permit		1		8							4	13		\$ -
	<b>Subtotal Task 600</b>	<b>0</b>	<b>12</b>	<b>0</b>	<b>124</b>	<b>40</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>	<b>0</b>	<b>30</b>	<b>246</b>		<b>\$ 21,255</b>
<b>Task 700 - SRF Funding and Rate Increase Analysis Assistance</b>															
610	SRF Funding Application Assistance		2						100			8	110	40%	\$ 7,449
620	Assistance with Rate Increase Analysis		2						52			4	58		\$ -
	<b>Subtotal Task 700</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>152</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>168</b>		<b>\$ 7,449</b>
<b>COLUMN TOTALS</b>		<b>227</b>	<b>265</b>	<b>219</b>	<b>1,209</b>	<b>401</b>	<b>47</b>	<b>408</b>	<b>152</b>	<b>1,322</b>	<b>34</b>	<b>243</b>	<b>4,527</b>		<b>\$99,874</b>

**Project Annual Disbursement Projections  
for Use in Fiscal Impact Analysis**

Date Prepared: December 2, 2010

Applicant Name: City of Rio Dell

Estimated Start of Construction Date: June 1, 2011

Estimated Completion of Construction Date: June 1, 2012

Estimated Total Funding Assistance (\$): \$12,817,137

Applicant's Project Name	Project No. *	7/1/10-6/30/11	7/1/11-6/30/12		
RIO DELL WASTEWATER TREATMENT UPGRADE AND DISPOSAL PROJECT	C-06-7401-110	\$1,068,095	\$11,749,042		

Instructions: Please provide the applicant's required cash flow needs for the entire project for each State Fiscal Year (SFY). The SFY begins July 1 and ends June 30 of each year.

\* Project No. is assigned by the Division and may be found on the following State Water Control Board's web site for the current adopted Project Priority Listing: [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/pubs.shtml](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/pubs.shtml)

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*675 Wildwood Avenue  
Rio Dell, CA 95562*



**STAFF REPORT  
RIO DELL CITY COUNCIL  
DECEMBER 7, 2010**

TO: Rio Dell City Council  
FROM: Karen Dunham, City Clerk  
THROUGH: Ron Henrickson, City Manager  
DATE: December 7, 2010  
SUBJECT: PG&E Wireless Smart Meter Program

Attached you will find documentation as information only regarding the Smart Meter Program including a draft ordinance from the Town of Fairfax establishing a temporary moratorium on the installation of smart meters and related equipment.

This item has only been placed on the agenda for your comments and discussion at this time.

July 28, 2010

California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

BY FACSIMILE AND U.S. MAIL: (415) 703-1758

Re: Smart Meter Deployment in the Town of Fairfax

Dear Commissioners:

I am writing to convey my observations about Pacific Gas and Electric Company's deployment of its Smart Meter program in the Town of Fairfax.

The Fairfax Town Council has received numerous written and live comments from local residents who are extremely apprehensive about the ongoing installation of these devices in our Town. Their concerns break down into five broad categories:

1. Health concerns: There is a large percentage of individuals who chose to live in Fairfax because of its pristine environment and its local government's rigorous attempts to adhere to the precautionary principal. The fact that the smart meter program will create a pervasive electromagnetic field (EMF) in our community is of great concern to many residents. Electromagnetic sensitivity has been recognized as a protected condition under the Americans with Disabilities Act and recent peer reviewed literature has suggested potential health risks to chronic exposure. Because the Smart Meter network is a mesh network, its impossible to predict individual levels of exposure. Numerous residents have posted their property with signs demanding that their meters be left in place.

2. Security Risks: The security issues inherent in the Smart Meter program were analyzed in depth by the Maryland Public Service Commission's decision denying a very similar AMI program in Baltimore. At pages 35-40, the Commission stated:

"Cyber-security in the context of the "smart grid" refers to the security of the information passing over the communications of the "smart grid" as well as security of the controls over system

components. AMI is an enormous complex of inter-connected networks designed to administer dynamic pricing and manage grid function. Such an extensive network is vulnerable to security risks in many different ways, including physical tampering, intercepting or blocking the wireless signals that connect the smart meters to data collection points, or obtaining customer password information used on the web portal. Unauthorized access to smart meters could allow a hacker to artificially increase energy bills or shut off power entirely.”

3. Privacy Concerns: There is a growing consensus that the smart meter program does not have adequate privacy controls. The program will generate an unprecedented database of confidential information subject to intrusion and commercial misuse. PG&E has admitted that it currently does not have the capacity to manage the data and the State of California does not have comprehensive Fair Information Practices that provide legal and regulatory guidelines sufficient to safeguard consumer privacy. Further, I believe that the degree of intrusion raises privacy issues of Constitutional dimension under the Supreme Court’s decision in *Kyllo v. U.S.* 533 U.S. 27 (2001) . The enclosed Memorandum from the University of California School of Information summarizes the numerous unresolved privacy issues involved in this program.

4. Accuracy: As the Commission is well aware, there have been hundreds of reports of unexplained billing spikes that have not been resolved. Senator Florez held hearings about those complaints and the Structure Group’s analysis of the accuracy of the Smart Meter system is not complete. Our residents question why these devices are being deployed before the Commission has data that confirms their reliability.

5. Conflicts of Law and Authority: Smart Meter antennae have been deployed in Fairfax’s public rights of way without the consultation of Town Staff. Fairfax’s Wireless Telecommunications Ordinances have long required that any party seeking the installation of wireless antennae obtain a use permit from the Fairfax Planning Commission. (Fairfax Municipal Code Chapter 19.04) I believe that the Town of Fairfax has authority to enforce compliance with its ordinances under Public Utilities Code sections 6203 and 2902.

Given the foregoing, I am respectfully requesting that the Commission suspend deployment of the Smart Meter program until its profound socio-economic, scientific and legal implications are more thoroughly understood and reconciled. Thank you for your time and attention.

Sincerely yours,

LARRY BRAGMAN  
Fairfax Town Council

ORDINANCE NO. 752

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTED AS AN URGENCY MEASURE ESTABLISHING A TEMPORARY MORATORIUM ON THE INSTALLATION OF SMARTMETERS AND RELATED EQUIPMENT WITHIN THE TOWN OF FAIRFAX OR IN, ALONG, ACROSS, UPON, UNDER AND OVER THE PUBLIC STREETS AND PLACES WITHIN THE TOWN OF FAIRFAX, AND DECLARING THE URGENCY THEREOF

The Town Council of the Town of Fairfax, California does ordain as follows:

Section I. Findings:

- A. The Town of Fairfax (the "Town"), through its police powers granted by Article XI of the California Constitution, retains broad discretion to legislate for public purposes and for the general welfare, including but not limited to matters of public health, safety and consumer protection.
- B. In addition, the Town retains authority under Article XII, Section 8 of the Constitution to grant franchises for public utilities, and pursuant to California Public Utilities Code section 6203, "may in such a franchise impose such other and additional terms and conditions..., whether governmental or contractual in character, as in the judgment of the legislative body are to the public interest."
- C. Further, Public Utilities Code section 2902 reserves the Town's right to supervise and regulate public utilities in matters affecting the health, convenience and safety of the general public, "such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation."
- D. Pacific Gas & Electric Company ("PG&E") is now installing SmartMeters in Central and Northern California and will be installing these meters in Fairfax in the very near future. PG&E has already installed antennae to support the SmartMeter system at four sites within the public rights of way in the Town without obtaining permits from the Town as required by Section 19.04 of the Town Code. Further, PG&E did not comply with Section XIV of General Order 131-D of the California Public Utilities Commission (the "CPUC"), which requires a utility to consult with the local jurisdiction on land use matters prior to locating its facilities.
- E. Concerns about the impact and accuracy of SmartMeters have been raised nationwide, leading the Maryland Public Service Commission to deny permission on June 21, 2010 for the deployment of SmartMeters in that state. The State of Hawaii Public Utility Commission also recently declined to adopt a smart grid system in that state. The CPUC currently has pending before it a petition from the City and County of San Francisco, the Town of Fairfax and other municipalities, seeking to delay the implementation of

SmartMeters until the questions about their accuracy can be evaluated.

- F. Indeed, major problems and deficiencies with SmartMeters in California have been brought to the attention of the Fairfax Town Council, including PG&E's confirmation that SmartMeters have provided incorrect readings costing ratepayers untold thousands of dollars in overcharges and PG&E's records outlined "risks" and "issues" including an ongoing inability to recover real-time data because of faulty hardware originating with PG&E vendors.
- G. The ebb and flow of gas and electricity into homes discloses detailed information about private details of daily life. Energy usage data, measured moment by moment, allows the reconstruction of a household's activities: when people wake up, when they come home, when they go on vacation, and even when they take a hot bath. SmartMeters represent a new form of technology that relays detailed hitherto confidential information reflecting the times and amounts of the use of electrical power without adequately protecting that data from being accessed by unauthorized persons or entities and as such pose an unreasonable intrusion of utility customers' privacy rights and security interests. Indeed, the fact that the CPUC has not established safeguards for privacy in its regulatory approvals may violate the principles set forth by the U.S. Supreme Court in *Kyllo v. United States* (2001), 533 U.S. 27.
- H. Significant health questions have been raised concerning the increased electromagnetic frequency radiation (EMF) emitted by the wireless technology in SmartMeters, which will be in every house, apartment and business, thereby adding additional man-made EMF to our environment around the clock to the already existing EMF from utility poles, individual meters and telephone poles.
- I. FCC safety standards do not exist for chronic long-term exposure to EMF or from multiple sources, and reported adverse health effects from electromagnetic pollution include sleep disorders, irritability, short term memory loss, headaches, anxiety, nausea, DNA breaks, abnormal cell growth, cancer, premature aging, etc.. Because of untested technology, international scientists, environmental agencies, advocacy groups and doctors are calling for the use of caution in wireless technologies.
- J. The primary justification given for the SmartMeters program is the assertion that it will encourage customers to move some of their electricity usage from daytime to evening hours; however, PG&E has conducted no actual pilot projects to determine whether this assumption is in fact correct. Non-transmitting time-of-day meters are already available for customers who desire them, and enhanced customer education is a viable non-technological alternative to encourage electricity use time-shifting. Further, some engineers and energy conservation experts believe that the SmartMeters program--in totality--could well actually increase total electricity consumption and therefore the carbon footprint.
- K. Because the potential risks to the health, safety and welfare of Fairfax residents are so great, the Fairfax Town Council wishes to adopt a twelve month moratorium on the installation of SmartMeters and related equipment within the Fairfax Town Limits. The twelve month

period will allow the CPUC petition process referenced in Recital E above to be completed and for additional information to be collected and analyzed regarding potential problems with SmartMeters.

- L. There is a current and immediate threat to public health, safety and welfare because, without this urgency ordinance, SmartMeters or supporting equipment will be installed or constructed or modified in the Town without PG&E's complying with the CPUC process for consultation with the local jurisdiction, the Town's Code requirements, and subjecting residents of Fairfax to the privacy, security, health, accuracy and consumer fraud risks of the unproven SmartMeter technology.
- M. The Town Council hereby finds that it can be seen with certainty that there is no possibility that the adoption and implementation of this Ordinance may have a significant effect on the environment. This Ordinance does not authorize construction or installation of any facilities and, in fact, imposes greater restrictions on such construction and installation in order to protect the public health, safety and general welfare. This Ordinance is therefore exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations.

## Section II. Moratorium

1. No SmartMeter may be installed in or on any home, apartment, condominium or business in Fairfax, and no equipment related to SmartMeters may be installed in, on, under, or above any public street or public right of way in the Town for twelve months from the date of this Ordinance, at which time the Fairfax Town Council, shall consider whether to extend or terminate this prohibition in light of the then-current data on SmartMeter privacy, safety, accuracy and health effects.

2. Violations of this Moratorium may be charged as infractions or misdemeanors as set forth in Chapter 1.08.010 of the Town Code or as administrative citations as set forth in Chapter 1.10 of the Town Code, in the discretion of the Town. In addition, violations shall be deemed public nuisances, with enforcement by injunction or any other remedy authorized by law.

3. The Fairfax Town Manager is hereby authorized to direct all Town Departments, including the Town Attorney, to facilitate compliance with the purpose and intent of this Ordinance using the enforcement powers described in the preceding paragraph.

## Section III. Effectiveness

This Ordinance, being adopted as an urgency measure for the immediate protection of the public safety, health, and general welfare and containing a declaration of the facts constituting the urgency, upon passage by a minimum four-fifths (4/5) vote of the Town Council, shall take effect immediately upon its adoption and shall continue in effect until modified or rescinded.

## Section IV. Severability

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable.

Section V. Publication

Copies of the foregoing ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; 3. Bulletin Board, Fairfax Women's Club building; which places are designated for that purpose.

The foregoing ordinance was duly adopted on the 4th day of August, 2010, by the following vote, to wit:

AYES: Bragman, Hartwell-Herrero, Tremaine, Weinsoff

NOES: None

ABSENT: Reed

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LEW TREMAINE, MAYOR

Attest:

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Town Clerk

# **TOWN OF FAIRFAX STAFF REPORT**

**TO: Mayor and Town Council**

**FROM: Michael Rock, Town Manager**

**DATE: August 4, 2010**

**SUBJECT: Discussion/Consideration of an urgency measure establishing a temporary moratorium on the installation of Smart Meters and related equipment within the Town of Fairfax or in, along, across, upon, under and over the public streets and places within the Town of Fairfax, and declaring the urgency thereof**

## **RECOMMENDATION**

The Town Council considers adopting an emergency ordinance establishing a moratorium on the installation of smart meters and related equipment within the Town of Fairfax or in, along, across, upon, under and over the public streets and places within the Town of Fairfax, and declaring the urgency thereof.

## **DISCUSSION**

At the July 7, 2010 Town Council meeting the Town Council took several actions related to the smart meters including directing staff to draft an ordinance that would establish a moratorium on the installation of smart meters in the Town of Fairfax. Attached to this staff report is the proposed ordinance which can be adopted this evening as an urgency ordinance with a 4/5 vote.

Also attached to this staff report is a letter written by Vice Mayor Bragman to the CPUC requesting the CPUC suspend deployment of the smart meter program. The final attachment is a memo written by the UC Berkeley School of Information regarding smart meters and privacy issues.

## **FISCAL IMPACTS**

Minor staff time costs to prepare the ordinance.

## **ATTACHMENTS**

1. Ordinance establishing a moratorium on the installation of smart meters in the Town of Fairfax
2. Vice Mayor Bragman letter to the CPUC
3. Memo written by the UC Berkeley School of Information regarding smart meters and privacy issues

March 7, 2010

Dr. George W. Arnold, National Coordinator for Smart Grid Interoperability,  
National Institute of Standards and Technology (NIST)  
Office of Science and Technology Policy (OSTP), Executive Office of the President

**Re: Policy Questions on Data Ownership and Access in the Smart Grid**

Dear Dr. Arnold and OSTP Staff:

We thank OSTP and NIST for their interest in the public's views on the consumer interface to the Smart Grid. The transition to the Smart Grid promises great benefits for consumers, including lowered energy costs, increased usage of environmentally friendly power sources, and enhanced security against attack and outage. We are pleased to offer our thoughts on the consumer interface to the Smart Grid, and particularly our thoughts on related consumer privacy issues.

From the perspective of consumers, and particularly from the perspective of consumer privacy, we stand at a critical juncture in the development of Smart Grid. First, the emergence of increasingly sophisticated metering technologies is enabling the unprecedented collection of energy consumption data, removing a "latent structural limitation" that previously protected the revelation of intimate details about household activities.<sup>1</sup> Whereas historically a consumer's consumption data may have been collected once a month or less frequently from a traditional meter fixed to the side of a house, in the Smart Grid, sophisticated new systems will collect and record 750 to 3,000 (or more) data points a month, revealing variations in consumption that can reflect specific household activities such as sleep, work, and travel habits.<sup>2</sup>

Second, the transition to a highly-interconnected and less-bordered electrical infrastructure is inviting participation by new entities, such as third-party service providers offering new web-based portals for managing energy use. As a result, entities other than the utilities will be receiving consumer energy consumption data and using it in new ways, presenting the need for privacy analysis extending beyond the more straightforward consumer-to-utility relationship. Third, the rapid pace of Smart Grid deployment, and the speed at which new Smart Grid technologies are moving out of the pilot project stage to large-scale implementation, are making the consideration of the consumer privacy issues presented by these technologies more urgent. Finally, against this landscape of rapid development, legal protections for home energy usage data are fragmented and unclear. As NIST noted in its First Draft

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<sup>1</sup> See Harry Surden, *Structural Rights in Privacy*, 60 SMU L. REV. 1605, 1618 (2007), <http://ssrn.com/abstract=1004675> (noting how "the widespread diffusion of an emerging technology effectively causes a rights-shift with respect to privacy interests protected by latent structural constraints").

<sup>2</sup> Jack I. Lerner & Deirdre K. Mulligan, *Taking the 'Long View' on the Fourth Amendment: Stored Records and the Sanctity of the Home*, 2008 STAN. TECH. L. REV. 3, 3.

NISTIR 7628, there remains a “lack of consistent and comprehensive privacy policies, standards, and supporting procedures throughout the states, government agencies, utility companies, and supporting entities that will be involved with Smart Grid management and information collection and use,” creating “a privacy risk that needs to be addressed.”<sup>3</sup>

Therefore, there is an urgent need for robust data usage guidelines, based on the full set of Fair Information Practice principles, that can be reflected in business practices, as well as technical standards and requirements, as Smart Grid deployment continues and develops. The time to address consumer privacy concerns is now, while we have the opportunity to thoughtfully build protections into technologies and business practices to better effect, and at a lower cost, than attempting to “bolt on” privacy protections later.

### **OSTP Question 1: Who owns the home energy usage data?**

#### **A. Consumers Should Both Own and Control Home Energy Usage Data.**

Home energy usage data is generated by, and is a reflection of, consumers’ activities within their homes, posing new and substantial risks to individual privacy. This data also has an important role to play in supporting innovations that will help achieve broader energy policy goals in a de-centralized and competitive environment. Accordingly, if anyone “owns” home energy usage data, it should be the utility customers. Assigning data ownership to utilities would turn them into information gatekeepers and could impede realization of both privacy and innovation policy goals. For these reasons, if property rights are the framework being used, consumers should be considered the owners of their home energy use data, and utilities or other holders of energy use data should be considered trustees or custodians of the data, who must handle it with respect for the privacy and other interests of the consumer.

Simply determining that customers “own” this data, however, does not resolve the privacy issues or provide a workable set of rules or principles to govern its use. At its worst, ownership can leave consumers with the limited ability to choose between alienating their data or not. What consumers need is ongoing rights in their data—regardless of where it is stored and who it is held by—complimented by assurances that those to whom they entrust it are bound by clear rules that bind them to abide by consumers decisions. Such a framework respects the ongoing implications such data has for the consumer’s privacy and safety. Rights and responsibilities must be established with regard to the data, and those rights and responsibilities should be established with regard to underlying values of privacy, security, efficiency, interoperability, consumer choice, competition and innovation.

Such a comprehensive policy framework exists in the widely-recognized Fair Information Practice Principles (“FIPs”). The FIPs framework will ensure that all Smart Grid stakeholders have consistent rights and responsibilities in connection with home energy usage data. The issues of use, retention, sharing, access, security, and other components of FIPs need to be answered regardless of who “owns” the data.

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<sup>3</sup> NIST, *Draft NISTIR 7628 Smart Grid Cyber Security Strategy and Requirements*, <http://www.nist.gov/smartgrid/>.

We urge OSTP to recognize and promote the use of the Fair Information Practice principles, as outlined in detail below, to manage the collection and use of home energy usage data.

**B. Privacy Interests in Home Energy Usage Data Require the Robust, Comprehensive Application of Fair Information Practice Principles.**

Consumers have strong privacy interests in home energy usage data because it pertains to activities within a physical and associative domain—the home—that United States law and culture recognize as a locus of individual autonomy and family intimacy. Smart Grid deployment will introduce an entirely new avenue for exposing information about household activities. It would be anomalous to fail to protect this data against unforeseen uses by entities that receive it directly from consumers (e.g., utilities, application or service providers) as well as against disclosures to law enforcement agencies or other third parties.

The potential for home energy usage data to reveal a great deal about in-home activities is clear. For example, a recent analysis demonstrated that home energy usage data collected at a resolution that is well within current smart meter capabilities permits extremely accurate inferences about whether a home is occupied and whether its occupants are asleep or awake.<sup>4</sup> Traces of energy usage over time may also contain signatures of certain appliances—refrigerators and toasters, for example—that are so clear they require little or no analysis to detect.<sup>5</sup> Moreover, technical standards for meters and other smart devices would add information about specific devices to this mix. The ZigBee Smart Energy Profile Specification, for example, specifies a data field that declares the type of device that is in use (e.g., interior lighting, water heater, etc.). California utilities are deploying smart meters that are capable of taking usage readings every five seconds.<sup>6</sup>

This type of information about home appliance use will reflect intimate details of people's lives and their habits and preferences inside their homes. As Justice Scalia recognized in *Kyllo v. United States*, “at what hour each night the lady of the house takes her daily sauna and bath” is “a detail that many would consider ‘intimate.’”<sup>7</sup> Some of the activities that might be revealed through the Smart Grid include personal sleep and work habits, cooking and eating schedules, the presence of certain medical equipment and other specialized devices, and

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<sup>4</sup> See Mikhail A. Lisovich, Deirdre K. Mulligan, and Stephen B. Wicker, *Inferring Personal Information from Demand Response Systems*, IEEE SECURITY & PRIVACY, Jan./Feb. 2010, 11-20.

<sup>5</sup> See Elias Leake Quinn, *Smart Metering & Privacy: Existing Law and Competing Policies* v, 3 (Spring 2009) (providing examples).

<sup>6</sup> Calif. Energy Comm'n, *Proposed Load Management Standards (Draft Committee Report)* 25, CEC-400-2008-027-CT, Nov. 2008, at <http://www.energy.ca.gov/2008publications/CEC-400-2008-027/CEC-400-2008-027-CTD.PDF> (“The meters [being deployed by California’s three major investor-owned utilities] will measure consumption in five second increments and transmit the data back to the utility daily or on demand.”)

<sup>7</sup> *Kyllo v. United States*, 533 U.S. 27, 38 (2001).

activities that signal information about personal behavior.<sup>8</sup> As a result, information collected by the Smart Grid is valuable for many purposes other than energy efficiency, most prominently commercial exploitation by advertisers and marketers, access by criminals who wish to peek into homes, and access to household information and surveillance by government agencies.

Put simply, existing Smart Grid technologies can reveal a great deal of information about in-home activities, and these technologies are on a course to generate more detailed and voluminous data. Nonetheless, deployment is proceeding in the absence of a national process to address these risks.

Under the existing, fragmented regulatory framework, privacy protections for home energy usage data depend heavily upon what kind of entity possesses it. A utility, for example, might be subject to state utility commission rules and specific statutes that limit data use and disclosure.<sup>9</sup> A non-utility third party possessing the same data, on the other hand, probably would not face the same obligations, though general prohibitions against unfair or deceptive data practices (e.g., FTC Act § 5) and state security breach notification laws would apply.

Since individuals' privacy interests lie in what the data may reveal about them, rather than what type of entity possesses it, OSTP should promote principles that apply to all Smart Grid entities, including the activities of utility companies, third party service providers such as Microsoft and Google, and device manufacturers such as General Electric and Honeywell. Privacy principles should not subject different entities to different sets of rules where the entities are similarly interacting with consumer data. Privacy principles must also take into account the unique sensitivity of home energy usage data.

As we noted above, and as has been discussed at length elsewhere,<sup>10</sup> the privacy issues associated with home energy usage data can and should be addressed through robust application

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<sup>8</sup> Jack I. Lerner and Deirdre K. Mulligan, *Taking the 'Long View' on the Fourth Amendment: Stored Records and the Sanctity of the Home*, 2008 STAN. TECH. L. REV. 3.

<sup>9</sup> See, e.g., CAL. PUB. UTILS. CODE § 394.4 (requiring electric service providers to keep "customer information"—which encompasses "customer specific billing, credit, or usage information"—confidential unless the customer gives written consent to disclosure); Cal. Pub. Utils. Comm'n, Opinion Adopting Standards of Conduct Between Utilities and Their Affiliates, Decision 97-12-088 (Dec. 16, 1997) App. A IV.A, at [ftp://ftp.cpuc.ca.gov/gopher-data/energy\\_division/affiliate/R9704011-Appendix%20A.doc](ftp://ftp.cpuc.ca.gov/gopher-data/energy_division/affiliate/R9704011-Appendix%20A.doc) ("A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent."); Southern California Edison, Rule 22 (Direct Access Rules) C.3.a (Oct. 4, 2001), at <http://www.sce.com/NR/sc3/tm2/pdf/Rule22.pdf> (requiring a customer to give written authorization for a utility to disclose usage data to direct access service providers); San Diego Gas & Elec. Rule 25 (Direct Access Rules) C.3.a (Mar. 1, 1999), at [http://www.sdge.com/tm2/pdf/ELEC\\_ELEC-RULES\\_ERULE25.pdf](http://www.sdge.com/tm2/pdf/ELEC_ELEC-RULES_ERULE25.pdf) (same); Pacific Gas & Elec., Rule 22 (Direct Access Rules) C.3.a (Dec. 1, 1997), at [http://www.pge.com/tariffs/tm2/pdf/ELEC\\_RULES\\_22.pdf](http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_22.pdf) (same).

<sup>10</sup> See Comments of the Center for Democracy & Technology on Draft NIST Interagency Report (NISTIR) 7628, Smart Grid Cyber Security and Requirements, National Institute of Standards

of the full set of Fair Information Practice principles (FIPs). These principles reflect international guidelines, and go beyond the currently dominant—and discredited<sup>11</sup>—model of “notice and choice.” A recent and comprehensive definition of FIPs was set forth by the Department of Homeland Security in its Privacy Policy Guidance Memorandum.<sup>12</sup> Developed to guide homeland security projects, the DHS formulation of the FIPs is surely adequate for issues associated with the Smart Grid. Based on that DHS guidance, we recommend the following privacy framework for the Smart Grid:

- **Transparency:** Smart Grid entities should be transparent and should provide meaningful, clear, full notice to the individual regarding the collection, use, dissemination, and maintenance of home energy usage data.
- **Individual Participation:** Entities should involve the individual in the process when using energy information and, to the extent practicable, seek ratepayer consent for the collection, use, dissemination, and maintenance of home energy usage data. Entities should also provide mechanisms for appropriate access, correction, and redress regarding their use of home energy usage data.
- **Purpose Specification.** Entities that receive home energy usage data should clearly and specifically describe how they will use the data, and whether and how any other entities will use it.
- **Data Minimization.** As NIST writes in its current draft cybersecurity framework, utilities should collect the “minimum amount of data necessary for service, provision and billing.”<sup>13</sup> Only data directly relevant and necessary to accomplish a specified purpose should be collected and data should only be retained for as long as necessary to fulfill the specified purpose.
- **Use Limitation.** Home energy usage data should be used solely for the purposes specified in the notice of purpose.
- **Data Quality and Integrity; Access and Correction.** Companies should, to the extent practicable, ensure that home energy usage data is accurate, relevant, timely and

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and Technology (Dec. 1, 2009) *available at*

<http://www.cdt.org/files/pdfs/CDT%20Comment%20NISTIR%207628%20Draft%2012-02-09%20FINAL%20-%20updated.pdf>.

<sup>11</sup> For example, National Telecommunications and Information Administration Associate Director for Domestic Policy Daniel J. Weitzner recently stated “[t]here are essentially no defenders anymore of the pure notice-and-choice model.” *See* Steve Lohr, *Redrawing the Route to Online Privacy*, N.Y. TIMES, Feb. 28, 2010, at Bus. 4,

<http://www.nytimes.com/2010/02/28/technology/internet/28unbox.html> (quoting Mr. Weitzner).

<sup>12</sup> Issued Dec. 28, 2008, *at*

[http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_policyguide\\_2008-01.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf).

<sup>13</sup> NIST, *Draft NISTIR 7628 Smart Grid Cyber Security Strategy and Requirements*, *supra* note 3, at 106.

complete. Consumers should be able to view and correct any profiles that utilities or third parties create from their energy usage.

- **Security.** Companies should protect home energy usage data from accidental disclosure as well as malicious efforts to intercept or corrupt it. Making technical protections for data integrity and confidentiality part of the design of Smart Grid components will protect privacy and promote the security of the electric grid as a whole.
- **Accountability and Auditing .** Companies should be accountable for complying with these principles, should prevent and detect violations of an entity’s policy, and should hold the responsible persons accountable. Training for personnel who handle home energy usage data may help to prevent privacy violations. In additions, audits of actual data use will help to deter and detect misbehavior.

Given that Smart Grid technology is nascent, and that its course is uncertain, the flexibility in these principles is a considerable virtue. But it also means that ongoing policy development and guidance by OSTP, NIST, and other federal agencies is necessary. Federal agencies could provide a forum for analyzing and addressing home energy usage data privacy risks, sparing stakeholders the expensive of multiple state-level proceedings.

### C. Supporting Innovation in the Smart Grid through Home Energy Usage Data

All stakeholders have an interest in ensuring that home energy usage data supports national Smart Grid policy goals, such as developing demand response capabilities, building energy storage capacity, and integrating renewable energy sources. For this reason, assigning ownership of home energy usage data to utilities would make little sense. As participants in a rate-regulated industry under federal and state policies that promote grid modernization, utilities have a responsibility to permit innovative data uses.<sup>14</sup> Granting exclusive rights to utilities could turn them into the exclusive gatekeepers of home energy usage data, thus hindering other efforts to use this data in Smart Grid technologies.

#### **OSTP Question 2: Should individual consumers and their authorized third-party service providers have the right to access energy usage data directly from the meter?**

Yes. Provided that it is technically feasible and safe and does not pose unacceptable risks to the trustworthiness of the grid (as determined under uniform, objective criteria administered by a neutral decision maker<sup>15</sup>), consumers and the third parties they authorize should be able to

<sup>14</sup> See Cal. Pub. Utils. Comm’n, Opinion Adopting Standards of Conduct Between Utilities and Their Affiliates, *supra* note 9, at App A IV.A (requiring a utility to provide customer information “to its affiliates and unaffiliated entities *on a strictly non-discriminatory basis*” upon written authorization by the customer) (emphasis added).

<sup>15</sup> A potentially useful model for this kind of determination is the set of standards for equipment that connects with the telephone network. See *generally* 47 C.F.R. part 68. A primary purpose of these “Part 68” rules “is to provide for uniform standards for the protection of the telephone

access energy usage data directly from the meter. Allowing consumers access to their home energy usage data is an important implementation of the FIPs requirements of individual participation and access, both described above.

Direct access to the meter raises two further policy issues.

First, as stated above, utilities and third parties should handle home energy usage data in a manner consistent with a comprehensive set of FIPs. Consumers have strong privacy interests in this data because it can reveal significant details about activities within the home. Whether data is disclosed to a utility, a third party via a utility, or directly to a third party, applying comprehensive and generally applicable fair information practice principles, as discussed above, will provide individuals with a predictable, consistent baseline of protection.

Second, individuals and authorized third parties should be able to access data in a useful format. The data should be made available in a non-proprietary, machine-readable, machine-processable format. Satisfying this requirement does not necessarily mean writing a standard for data interchange. If the structure and meaning of data from the meter are made publicly available and are not encumbered by patent or other restrictions, then all stakeholders will be able to make the best use of it. When accompanied by clear rules and an open process for identifying and assessing any safety or reliability risks that new devices might pose, opening data to individuals and authorized third parties will protect innovation and favor interoperability in smart devices.

**OSTP Question 3: If the smart meter, via the utility network, is the primary gateway for obtaining residential energy usage data, will it be technically and commercially feasible for consumers and their authorized third-party service providers to access the data easily and in real time?**

The question of whether it is technically and commercially feasible to provide real-time access to consumers and third-party service providers is beyond the scope of our expertise. However, one aim of Smart Grid deployment should be to ensure such accessibility. Choices about data formats and interfaces, among others, will determine the feasibility of access. Therefore, as a procedural matter, we recommend that OSTP undertake a more extensive effort to answer this question than is possible in the current proceeding. OSTP should commission an independent assessment of smart meters that are deployed or at an advanced state of development. This assessment would provide OSTP, NIST and other federal agencies, as well as state utility commissions with a comprehensive picture of smart meter architecture as it affects consumer access.

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network from harms caused by the connection of terminal equipment and associated wiring thereto.” *Id.* § 68.1.

**OSTP Question 4: What types of policies are needed to gain consumer confidence that personal energy usage data is secure and not subject to abuse?**

As our responses to Questions 1 and 2 indicate, establishing robust, FIPs-based principles for information acquisition, use, and disclosure that apply to all Smart Grid stakeholders is critical to building the confidence that is necessary to spur consumers to adopt Smart Grid technologies and to participate in Smart Grid programs.

To be sure, a variety of federal and state laws and policies provide some assurance for consumers' privacy and security interests in household energy data. These laws include:

- The FTC Act, which prohibits “unfair or deceptive acts or practices.”<sup>16</sup> The FTC has taken enforcement actions against companies that fail to take reasonable measures to keep customer-related information secure.
- The Computer Fraud and Abuse Act (CFAA)<sup>17</sup> prohibits gaining unauthorized access to computers (which would include smart meters) that are used in interstate commerce.
- The Electronic Communications Privacy Act (ECPA)<sup>18</sup> prohibits the interception of electronic communications in transit, as well the unauthorized disclosure of stored communications contents and records. ECPA imposes few constraints on data within an organization, however, and thus fails to address an important class of privacy risks in home energy usage data.
- Security breach notification laws are state-level statutes that generally require any person or organization that controls personally identifiable information to report instances of unauthorized access.<sup>19</sup>

Even taken together, however, these laws do not provide adequate privacy and security assurances, for two reasons.

First, it is not yet clear whether, and if so how, some of these protections will apply to the Smart Grid. The standards for law enforcement or civil litigant access to home energy usage data—critical privacy questions—are unclear and under current law are likely to vary based on the location and entity holding the data, as well as state by state.<sup>20</sup> Is it permissible for the

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<sup>16</sup> 15 U.S.C. § 45.

<sup>17</sup> 18 U.S.C. § 1030. Most states have analogous “anti-hacking” statutes.

<sup>18</sup> 18 U.S.C. §§ 2510-22, 2701-2712, 3121-27.

<sup>19</sup> Forty-five states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted security breach notification laws. Nat'l Conf. of State Legislatures, State Security Breach Notification Laws (Dec. 9, 2009), at <http://www.ncsl.org/default.aspx?tabid=13489> (providing links to statutes).

<sup>20</sup> Jack I. Lerner and Deirdre K. Mulligan, Taking the 'Long View' on the Fourth Amendment: Stored Records and the Sanctity of the Home, 2008 Stan. Tech. L. Rev. 3 (discussing bizarre implication of easy access to utility records due to 4<sup>th</sup> Amendment business records doctrine)

National Security Agency or another government agency to ask a utility to divert all of the smart grid data—information that reveals the in-home activities of millions of individuals—to a secret room for mining and analysis? Nothing in current statutory law clearly prohibits this. Clearly, laws about government access must be updated to clarify when, if ever, and under what circumstances such highly intrusive data may be accessible to the government. Further, Smart Grid technologies are nascent. None of the Smart Grid stakeholders fully understands the scale and scope of energy usage data that may be generated, how it could be combined with other data sources, and what might be inferred through analysis.

Second, the legal frameworks outlined above are largely reactive and provide little incentive to include privacy controls in the design of smart meters and other Smart Grid components. For example, the Computer Fraud and Abuse Act provides criminal and civil penalties for individuals who cause harm by hacking into computers (such as smart meters) irrespective of the adequacy of technical protections on the system in question. Thus, it provides no additional incentive to device manufacturers, utilities, and other service providers to invest in security.

OSTP's support for the privacy principles discussed in this comment would go a long way toward promoting a uniform, comprehensive framework that will provide guidance for federal agencies, state utility regulators, and technology firms. Adopting a "privacy by design" approach, and promoting principles and standards that reflect privacy interests during buildout, rather than attempting to tack on privacy at a later point, is the most effective means of protecting consumer privacy and security.<sup>21</sup> Embedding privacy protections into the technology and business practices now, before smart meters and other Smart Grid technologies are fully deployed, will also be less expensive than attempting to address these issues in the future, and will make the grid more adaptable to changing threats to privacy and security as use increases.

For these reasons, we urge OSTP to promote guidelines or best practices based on FIPs for all entities engaged in the collection and use of home energy usage data.

#### **A Note on Process.**

As noted, we applaud both OSTP and NIST for engaging with the public to understand its views on Smart Grid deployment and the surrounding policy questions. Energy infrastructure and energy independence are critical societal issues, and it is right to address them in a public forum that is user-friendly and open to all.

At the same time, however, the process instituted by OSTP—with very little notice of the process overall, essentially no guidance on what OSTP or NIST plans to do with the information

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versus warrant requirement under *Kyllo v. United States*, 533 U.S. 27 (2001) to derive essentially the same information about in-home energy consumption, reviewing state case law regarding law enforcement access to utility records and discussing privacy provisions of utility law in California).

<sup>21</sup> See Information and Privacy Commissioner of Ontario, *Privacy by Design*, <http://www.privacybydesign.ca/>.

received, and extremely short timelines for response (for example, the comment period for questions on data access and ownership spanned only four business days)—creates profound difficulties for public interest groups and members of the public who wish to participate. In many cases, it is probably impossible for such groups and individuals, who have neither endless resources nor concentrated interests, to fully participate. Even those with resources and concentrated interests have struggled to participate. For example, Southern California Edison felt the need to request an extension in a proceeding on similar issues before the California Public Utilities Commission in order to focus on this proceeding, and was supported by Wal-Mart and the California Energy Storage Alliance.

We urge OSTP to recognize that appropriate information gathering and policy development related to the Smart Grid requires a considered and ongoing effort, with full participation by all affected parties. We request that OSTP revise its processes to reflect these considerations.

Sincerely,

/s/

Aaron J. Burstein\*  
University of California  
School of Information  
Berkeley, CA 94720

/s/

Deirdre K. Mulligan\*  
University of California  
School of Information  
Berkeley, CA 94720

/s/

Jennifer M. Urban  
Samuelson Law Technology  
& Public Policy Clinic, for:  
James X. Dempsey  
Ari Schwartz  
Center for Democracy & Technology

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\* Affiliations for these authors are provided for purposes of identification only. The views expressed in this comment do not purport to represent those of the University of California.

## Karen Dunham

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**From:** Millington's Deck <alismill@tidepool.com>  
**Sent:** Wednesday, December 01, 2010 3:05 PM  
**To:** 'Karen Dunham'  
**Subject:** FW: PG&E WIRELESS Smart Meter Program  
**Attachments:** Watsonvordinance.pdf

Hi Karen...Thought the City Mgr and Council might be interested in this (if they've not seen it already)...Alice

-----Original Message-----

**From:** The Cat's Meow [mailto:eatthemmousies@novatropo.com]  
**Sent:** Tuesday, November 30, 2010 10:47 PM  
**Subject:** Fw: PG&E WIRELESS Smart Meter Program

From: Professor Glen Chase

Re: PG&E Wireless Smart Meter Program

Date: 11/28/2010

PG&E HAS CONSISTENTLY MISREPRESENTED THEIR "SMART METER PROGRAM TO THE PUBLIC AND ELECTED REPRESENTATIVES.

Two dozen cities and counties have taken a stand against this WIRELESS smart meter program, ranging from moratorium requests to urgency ordinances prohibiting wireless smart meter installation.

It is not simple to challenge a predatory corporate monopoly with current state backing, but the consequences, once known, are so dire that cities and counties have stepped up and joined a common cause to stop this program and have it re-evaluated.

1. PG&E WIRELESS "Smart meters" are NOT part of, necessary for, or mandated by the plan to create a Smart GRID.

A Smart Grid moves electricity from place to place, such as from New York to Florida , or Tennessee to Texas . It moves energy from place to place in order to match supply and demand at different locations.

A successful smart grid can eliminate the need for each region to build additional power plants for their peak power usage times. Instead they can access additional power from other regions that are not experiencing peak demands.

PG&E has pretended that all the potential benefits and advantages of a Smart GRID will result from their own Smart Meters. None of the advantages of the Smart GRID result from PG&E Smart Meters.

- PG&E's Smart Meters do NOT reduce energy usage.

- PG&E's Smart Meters do NOT reduce our carbon footprint.
- PG&E's Smart Meters do NOT give consumers information in an effective cost/benefit form that they can reduce their energy consumption or reduce their utility bills.
- PG&E's Smart Meters create security problems, privacy violations, increased utility bills and unnecessary health risk exposures.

2. In order to attempt to analyze the so-called "Smart Meter" information by going on line, people would have to spend thousands of dollars to purchase new appliances with wireless transmitters to communicate through the home to the wireless smart meter.

Pilot programs with these wireless smart meters have cost over \$6,000 per household because the utility company provides the equipment the customers will need. In broader deployment of smart meters, customers will be paying in full.

For 99% of customers, a magnet on their refrigerator showing energy costs of different appliances and at different hours would be more practical, effective and considerably lower cost.

Various forms of Time-of-Use meters, real time meters and other WIRED meters can support a smart grid and these wired meters do not have the privacy, security, hacking and health issues of the WIRELESS PG&E Smart Meters.

3. The study of inaccurate "Smart meters" recently reported was done by Structure Company, a company IN-BED with PG&E. Structure did not reconcile complaints from the tens of thousands of people complaining that their utility bills have skyrocketed after installation of Smart Meters. Instead Structure Company did controlled lab experiments and then claimed ALL the people with problems had a hotter month than they expected and that's why their utility bills increased dramatically. All the customers are mistaken.

PG&E is one of Structure Companies biggest clients, and Structure company makes huge \$\$\$ in this Smart Meter Program. It is insulting that Structure Company would be represented as an impartial participant in such a test.

4. Wireless devices create Radio Frequency Radiation (RF Radiation) that is best to minimize and avoid whenever possible.

Cell phones are wireless by necessity. But fixed home and business locations do NOT require WIRELESS transmissions for monitoring utility use. Wired meters and wired transmissions are superior for customers in every way.

PG&E is installing a wireless system to eliminate jobs and increase profits, none of which will be shared with customers to lower utility bills.

Wired utility meters will also save the commons for emergency and mobile uses. It is absurd to use wireless transmissions for non-mobile fixed location home utility usage.

5. In order to transmit utility usage to PG&E, PG&E deploys wireless smart meters in a "Mesh Network." Each wireless meter transmits to, receives from and repeats the signals from the other meters in the community prior to the signal transmissions reaching PG&E.

The number of signal transmissions in the mesh network is potentially millions of times greater than the total of signals originating from each home. If visible, it would look like a three-dimensional window screen within each home and throughout the community.

The "Mesh Network" saves PG&E the \$ cost of infrastructure to collect the utility data. It saves PG&E the expense of sending the home signals directly to PG&E through shielded cables that would protect customers and communities from exposure.

6. The original PG&E "Smart Meter" program was approved for \$1.7 Billion in July, 2006, but the meters were approved as WIRED METERS with the information being transmitted through the power lines.

In March, 2009, PG&E went back for a rate increase of nearly 1/2 Billion. This \$.5 Billion + the original \$1.7 Billion gets you the current advertised \$2.2 Billion program.

However, and without scrutiny, PG&E ALSO SWITCHED THE METERS FROM WIRED TO WIRELESS during this rate increase request when relatively no one was watching or suspecting such a change. This explains why the current challenge against PG&E is not many years later, but as soon as it was realized the wireless consequences that this changed program now imposes.

7. On November 18, 2010 a dozen of the highest quality scientists with ultimate integrity from around the world met in conference at the Commonwealth Club in San Francisco .

Their tests vary in type, but each found **DAMAGE TO CELLS** or other harmful biological tissue damage from Radio Signal Radiation (wireless signal transmission radiation). Strong correlations have also been seen between wireless exposure and cancer.

This information now trumps previous reports from telecommunication industry groups that have said that they can't find cell damage in their tests. This scientific evidence also denies previous physics theories that ionizing radiation is extremely damaging to tissue and non-ionizing radiation is not.

Negative effects to cells occur not only from substantial exposures to common wireless devices, but also from low levels of exposure for short periods of time. And pulsed signal radiation, the type emitted by smart meters, is considerably more damaging than steady signal transmissions.

Wireless Smart Meters transmit, receive and repeat pulsed signal radiation 24/7 and have no shut off switch as other wireless devices do and PG&E is forcing installation on each home. The human body has excellent ability to recover from each day's activities. But wireless smart meters compromise the normal night sleeping hours when recovery occurs supported by electrical signals from brain to cells. For children, it is more serious. Children have millions of delicate electronic signals transmitted from brain to cells that are responsible, not only for recovery, but for growth and development of their bodies, organs, systems and brain.

PG&E imposing these exposures on children to avoid paying for wired infrastructure to carry utility signals to their facilities is unconscionable. PG&E corporate management destroyed families and killed children in Hinkley, California attempting to save money by not lining holding ponds, as publicized in the popular Erin Brockovich movie.

**8. PG&E has lied that their Wireless smart meters are within FCC Standards. FCC has no standards for these devices.** The FCC only has guidelines, quite different than "Standards" and the guidelines were given to the FCC by Industry associations that make their money with these devices.

The FCC has never tested wireless smart meters as PG&E is deploying them in a "Mesh Network." Even the individual wireless meters would not be allowed in many European, Asian and Latin American countries that are under less direct influence from the manufacturers of these devices.

Italy has successfully installed over 25 million WIRED smart meters. Switzerland, the location of the World Health Organization (WHO), is replacing the wireless systems in their schools and libraries with WIRED systems.

Much of Europe is now moving away from Wireless for many of the reasons described above, and also due to the hacking problem of wireless communications, yet PG&E is forcing us down a wireless path and pretending that is to our advantage.

**9. Please** view one or more of the following brief youtube videos from highly qualified scientists that share the truth with us about these wireless devices. (Radio Frequency Radiation is also referred to as RF, EMF and Microwave Radiation). These few videos are extremely time effective for even the busiest of schedules.

9.1 Insurance Companies Won't Insure Wireless Device Risks ( 3 minutes,13 seconds)

<http://eon3emfblog.net/?p=382>

9.2 Microwave radiation dangers in our home (6 minutes, 20seconds)

<http://www.youtube.com/watch?v=aAnrmJ3un1g>

9.3 Truth about Smart Meters - Dr. Karl Maret, MD, Biomedical Engineer

(Dr. Maret's presentation begins at 23:40 on the video telecast).

<http://www.communitytv.org/programs/online/truth-about-smart-meters>

9.4 Skyrocketing Utility Bills after PG&E installation (3 minutes, 19 seconds)

<http://www.bakersfieldnow.com/news/63581287.html?tab=video>

9.5 Suppressing the Science on RF Radiation (first few minutes of this 13 minute video)

<http://www.youtube.com/watch?v=B9ycyWd8GMs>

**10.** Two dozen cities and counties in California have taken a stand against the PG&E WIRELESS Smart Meter Program. The strongest positions are represented by ordinances against Wireless smart meter installation. Other cities have passed resolutions and all have requested a moratorium and/or investigation prior to further deployment of Wireless smart meters.

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*675 Wildwood Avenue  
Rio Dell, CA 95562*



## **STAFF REPORT**

**TO:** Mayor and Members of the City Council

**THROUGH:** Ron Henrickson, City Manager

**FROM:** Stephanie Beauchaine, Finance Director

**DATE:** December 7, 2010

**SUBJECT:** Operations Budget and Draft Combined Balance Sheet for the Year  
Ending 6/30/10

### **RECOMMENDATION**

Approve Final Operations Budget for the Year Ending 6/30/2010

### **BACKGROUND AND DISCUSSION**

Attached are both the Final Operations Budget and the Draft Combined Balance Sheet for the Year Ending June 30, 2010.

City of Rio Dell  
 Combined Balance Sheet with All Funds  
 June 30, 2010

	<b>Balance</b>
<b>Assets and Other Debits</b>	
Cash & Cash Equivalents	1,287,991.81
Cash Held in Trust	0.00
Investments	0.00
Receivables: Assessments	200,000.00
Accounts Receivable	186,687.87
Accrued Interest	587.31
Intergovernment	0.00
Notes Receivable	1,349,134.40
Due From Other Funds	0.00
Inventory	0.00
Prepaid Items	218.97
Grants Receivable	1,405,896.84
Infrastructure, Property, Machinery & Equipment	11,909,183.43
Amount for Long-Term Debt	0.00
<b>Total Assets</b>	<b><u>16,339,700.63</u></b>
<b>Liabilities</b>	
Accounts Payable	755,739.80
Accrued Payroll, Taxes, & Comp	37,913.89
Deferred Revenue	1,347,392.40
Interest Payable	0.00
Deposits Payable	26,821.97
Retainage Payable	0.00
Due To Other Funds	0.00
Assessment Bonds Payable	200,000.00
Notes Payable, Net	2,652,000.00
Capital Leases Payable	73,515.31
Compensated Absences Payable	26,974.43
Settlement Payable	0.00
<b>Total Liabilities</b>	<b><u>5,120,357.80</u></b>
Fund Balances-Beginning	9,677,471.31
<b>Excess Revenue over (under) Expense</b>	<b><u>1,599,736.63</u></b>
<b>Total Fund Balance</b>	<b><u>11,277,207.94</u></b>
<b>Total Liabilities and Fund Balance</b>	<b><u>16,397,565.74</u></b>

City of Rio Dell  
Operations Budget  
Year End 2009-2010

Fund	2009-2010				2009-2010				Net Expenditure Adjustment
	Revenue Budget	Revenue Actual	Variance	%	Expenditure Budget	Amended Expenditure Budget	Variance	%	
General Fund	\$ 694,475.00	\$ 720,618.00	\$ 26,143.00	4%	\$ 681,674.00	\$ 752,699.00	\$ 71,025.00	10%	\$ 44,882.00
Streets Funds	\$ 174,000.00	\$ 208,117.00	\$ 34,117.00	20%	\$ 173,420.00	\$ 200,561.00	\$ 27,141.00	16%	\$ (6,976.00)
Sewer Funds	\$ 666,667.00	\$ 676,544.00	\$ 9,877.00	1%	\$ 761,629.00	\$ 703,438.00	\$ (58,191.00)	-8%	\$ (68,068.00)
Water Funds	\$ 510,500.00	\$ 521,336.00	\$ 10,836.00	2%	\$ 507,451.00	\$ 503,090.00	\$ (4,361.00)	-1%	\$ (15,197.00)
Special Revenue Funds	\$ 95,900.00	\$ 136,016.00	\$ 40,116.00	42%	\$ 102,116.00	\$ 119,628.00	\$ 17,512.00	17%	\$ (22,604.00)
<b>Total</b>	<b>\$ 2,141,542.00</b>	<b>\$ 2,262,631.00</b>	<b>\$ 121,089.00</b>	<b>6%</b>	<b>\$ 2,226,290.00</b>	<b>\$ 2,279,416.00</b>	<b>\$ 53,126.00</b>	<b>2%</b>	<b>\$ (67,963.00)</b>

**Citywide Budget Highlights**

Revenues within all Fund groups exceed projections in total by 6%  
Expenditures within all Fund groups were increased by 2%.  
Citywide Net Budget Amendment totaled a reduction of expenditures in the amount of \$(67,963).

**General Fund Highlights**

General Fund Revenue exceeded projections by 4% for the fiscal year ending 6/30/2010  
Excess General fund Revenues are the result of an 8% increase in Vehicle License Fees, increased Franchise Fees, and the award of the CHRP Cops Grant which was not originally included in the operations budget.  
General Fund expenditure budget amendments are primarily the result of increased salaries related to contract City Management, the hiring of a CHRP grant funded police officer, and contract services for Annexation Analysis. Although resulting in a lesser effect, the General Fund also made payments to Workers Compensation and Liability Insurance as a result of Prior Year Loss costs to the City's JPA. All of which were not included in the original budget.  
The Net Budget Amendment for the General Fund resulted in an increase of \$44,882 in expenditures

**Streets Fund Highlights**

Street Funds Revenue exceeded projections due to increased SAFETEA Funds, and the resurgence of AB2928 TCRF Funds which accounted for a substantial 20% variance.  
  
The primary result of increased streets expenditures for the year are related to additional allocated costs associated with staffing modifications, and increased insurance costs for the year.  
The Net Budget Amendment for Streets Funds is a reduction of \$(6,976) in expenditures.

**Sewer Fund Highlights**

Sewer Fund Revenues exceeded annual projections by 1%.  
Sewer Fund Expenditures for the year totaled 8% less than anticipated primarily related to deferred maintenance in anticipation of Capital Improvements.  
The Net Budget Amendment for the Sewer Fund is a reduction of expenditures in the amount of \$(68,068)

**Special Revenue Funds**

Special Revenue Funds Revenue received exceeded projections by a nominal 41% as a result of unanticipated E-Waste Funds, CHRP Grant Funding, Increased COPS Funding, and minimal Donations.  
Expenditures were increased throughout the year by 15% and are primarily the result of increased staffing costs associated with increased SLESF COPS Funding which enabled the City to shift COPS Salaries out of the General Fund  
The Net Budget Amendment for combined Special Revenue Funds totaled a reduction of expenditures in the amount of \$(22,604).

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*675 Wildwood Avenue  
Rio Dell, CA 95562*



## **STAFF REPORT**

TO: Mayor and Members of the City Council

THROUGH: Ron Henrickson, City Manager

FROM: Stephanie Beauchaine, Finance Director

DATE: December 7, 2010

SUBJECT: Operations Budget and Combined Balance Sheet for the Period Ending  
September 30, 2010

### **RECOMMENDATION**

Receive and File

### **BACKGROUND AND DISCUSSION**

Attached are both the Operations Budget and the Combined Balance Sheet for the Period Ending September 30, 2010.

City of Rio Dell  
Operations Budget  
Period Ending 09/30/2010

Fund	YTD		YTD		YTD		YTD		Variance	%
	2010-2011	2010-2011	2010-2011	2010-2011	2010-2011	2010-2011	2010-2011	2010-2011		
	Revenue Budget	Revenue Actual			Expenditure Budget	Expenditure Actual				
General Fund	\$ 753,177.00	\$ 65,709.00	\$ (687,468.00)	9%	\$ 790,489.00	\$ 207,079.00	\$ (583,410.00)	26%		
Streets Funds	\$ 163,000.00	\$ 35,787.00	\$ (127,213.00)	22%	\$ 164,616.00	\$ 55,563.00	\$ (109,053.00)	34%		
Sewer Funds	\$ 641,292.00	\$ 172,281.00	\$ (469,011.00)	27%	\$ 679,262.00	\$ 156,572.00	\$ (522,690.00)	23%		
Water Funds	\$ 539,630.00	\$ 180,585.00	\$ (359,045.00)	33%	\$ 542,010.00	\$ 104,328.00	\$ (437,682.00)	19%		
Special Revenue Funds	\$ 101,805.00	\$ 2,578.00	\$ (99,227.00)	3%	\$ 119,245.00	\$ 8,911.00	\$ (110,334.00)	7%		
<b>Total</b>	<b>\$ 2,198,904.00</b>	<b>\$ 456,940.00</b>	<b>\$ (1,741,964.00)</b>	<b>21%</b>	<b>\$ 2,295,622.00</b>	<b>\$ 532,453.00</b>	<b>\$ (1,763,169.00)</b>	<b>23%</b>		

**Citywide Budget Highlights**

As of 9/30/2010 the City has received 21% of anticipated annual Citywide Operations Revenue. Revenue to date is proportionately low resulting from the County Tax Disbursement schedule and delayed receipt of operating grants and State subventions.

As of 9/30/2010 the City has expended 23% of operations funding appropriated for the year.

**General Fund Highlights**

General Fund Revenues received as of 9/30/2010 are 9% of annual projections. General Fund revenues are typically proportionately low during the first two quarters as a result of the County tax disbursement schedule. The City will receive it's first tax disbursement for the 2010-2011 Fiscal Year in January of 2011.

General Fund expenditures for the first quarter total 26% of annual appropriations.

**Streets Fund Highlights**

Streets Funds Revenue received to date totals 22% of annual projections. Much of the Street Funding is provided as a state subvention and is not received on a regularly scheduled basis.

Street Expenditures thus far total 34% of annual funding appropriated. Although expenditures are relatively high this quarter, that is to be expected as a result of contract payments for transportation services paid in full (in excess of \$35k) during the first quarter. Expenditures during the next quarter are expected to be significantly less.

**Sewer Fund Highlights**

Sewer Fund Revenues received total 27% of anticipated annual receipts. To date funding received is consistent with budget projections.

Sewer Fund Expenditures total 23% of annual funds appropriated. Similar to revenue, expenditures to date are consistent with budget projections.

**Special Revenue Funds**

Special Revenue Fund revenues received to date total 3% of annual projections. First quarter receipts are extremely low, however anticipated as the vast majority of funding within this category consist of grants and state subventions which are not disbursed on a regularly scheduled basis. To date, the City has not received any of the SLESF Cops Funding which represents 80% of Special Revenue Fund revenue budget. The City's first disbursement is typically received during the second quarter, but has been delayed in prior years as a result of the State budget crisis.

Special Revenue Fund expenditures total 7% of annual funds appropriated. SRF expenditures are typically unrelated to each quarter, and are mostly related to programmatic activities. Expenditures to date are within an expected range.

**City of Rio Dell  
 Combined Balance Sheet with All Funds  
 September 30, 2010**

	<b>Balance</b>
<b>Assets and Other Debits</b>	
Cash & Cash Equivalents	1,125,264.50
Cash Held in Trust	0.00
Investments	0.00
Receivables: Assessments	200,000.00
Accounts Receivable	182,140.70
Accrued Interest	0.00
Intergovernment	0.00
Notes Receivable	1,347,860.46
Due From Other Funds	0.00
Inventory	0.00
Prepaid Items	15,745.45
Grants Receivable	1,070,296.63
Infrastructure, Property, Machinery & Equipment	11,909,183.43
Amount for Long-Term Debt	0.00
	<hr/>
<b>Total Assets</b>	<b>15,850,491.17</b>
	<hr/> <hr/>
<b>Liabilities</b>	
Accounts Payable	303,290.13
Accrued Payroll, Taxes, & Comp	64,050.50
Deferred Revenue	1,346,118.46
Interest Payable	0.00
Deposits Payable	26,549.91
Retainage Payable	0.00
Due To Other Funds	0.00
Assessment Bonds Payable	200,000.00
Notes Payable, Net	2,652,000.00
Capital Leases Payable	73,515.31
Compensated Absences Payable	26,974.43
Settlement Payable	0.00
	<hr/>
<b>Total Liabilities</b>	<b>4,692,498.74</b>
Fund Balances-Beginning	9,677,471.31
<b>Excess Revenue over (under) Expense</b>	<b>(334,631.40)</b>
	<hr/>
<b>Total Fund Balance</b>	<b>9,342,839.91</b>
	<hr/>
<b>Total Liabilities and Fund Balance</b>	<b>14,035,338.65</b>
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675 Wildwood Avenue  
Rio Dell, CA 95562



**RIO DELL CITY COUNCIL  
STAFF REPORT  
DECEMBER 7, 2010**

TO: Rio Dell City Council  
FROM: Karen Dunham, City Clerk  
THROUGH: Ron Henrickson, City Manager  
DATE: December 7, 2010  
RE: Accepting Certification of Votes

**RECOMMENDATION**

Approve Resolution No. 1100-2010 accepting the Certification of Votes for the November 2, 2010 General Election.

**BUDGETARY IMPACT**

None

**BACKGROUND AND DISCUSSION**

The Humboldt County Elections Department officially certified the votes cast in the November 2, 2010 General Election on November 30, 2010. The Resolution accepts the vote count and recognizes the election of the three candidates with the highest vote count as Councilmembers Elect for a four year term as prescribed by law.

Swearing in and seating of the new councilmembers will take place at the January 4, 2011 regular meeting followed by the selection of Mayor and Mayor Pro Tem.

**ATTACHMENTS:**

Resolution No. 1100-2010  
Official Vote Count

**RESOLUTION NO. 1100-2010**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF RIO DELL ACCEPTING THE  
CERTIFICATION OF VOTES FOR THE  
NOVEMBER 2, 2010 GENERAL ELECTION**

**WHEREAS**, the Humboldt County Election Division has officially certified the votes cast in the November 2, 2010 General Election for the City of Rio Dell as:

- Mike Dunker - 446 Votes
- **Richard L. Leonard** - **500 Votes**
- **Melissa Marks** - **650 Votes**
- **Julie Woodall** - **662 Votes**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIO DELL  
DOES HEREWITH RESOLVE:**

1. To accept the vote count as certified by the Humboldt County Election Division (copy attached); and
2. To recognize the election of the three candidates with the highest vote count as Councilmembers Elect for a four year term or as otherwise prescribed by law.

**PASSED AND ADOPTED** this 7th day of December, 2010 by the following vote:

**AYES:**

**NOES:**

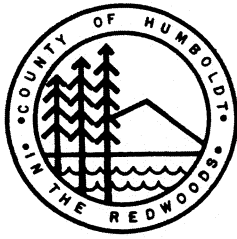
**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Julie Woodall, Mayor

ATTEST:

\_\_\_\_\_  
Karen Dunham, City Clerk



COUNTY OF HUMBOLDT  
Voter Registration-Elections

3033 H STREET, Rm 20  
EUREKA, CA 95501  
(707)445-7678/FAX (707)445-7204

December 2, 2010

City of Rio Dell  
675 Wildwood Avenue  
Rio Dell, CA 95562

Please find enclosed the Certification of Results of Canvass and the Statement of Votes Cast for the November 2, 2010, Consolidated General Election concerning the Rio Dell City Council race.

Sincerely,

Judith Hedgpeth  
Elections Office  
County of Humboldt

**Certificate of Results of Canvass  
November 2, 2010, Consolidated General Election  
City of Rio Dell**

STATE OF CALIFORNIA            )  
                                                  ) SS  
COUNTY OF HUMBOLDT         )

I, Carolyn Crnich, Registrar of Voters of the County of Humboldt, do hereby certify that pursuant to the provisions of Section 15301 et. al., of the California Elections Code, I did canvass the return of votes cast in the November 2, 2010, Consolidated General Election, and that the Statement of Votes Cast to which this Certification is attached shows the total number of votes cast and the total number of votes cast for each candidate and/or measure in each respective precinct therein and that the totals for each candidate and/or measure are true and correct.

WITNESS MY HAND AND OFFICIAL SEAL this 30<sup>th</sup> day of November 2010.

CAROLYN CRNICH  
REGISTRAR OF VOTERS

BY: Kelly E. Sanders  
KELLY E. SANDERS, Deputy

# Final Results — Official

## HUMBOLDT COUNTY, CALIFORNIA — CONSOLIDATED GENERAL ELECTION — November 02, 2010

Total Number of Voters : 51,792 of 78,387 = 66.07%

Precincts Reporting 134 of 134 = 100.00%

Party	Candidate	Early	Precinct	Total
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**FORTUNA CITY COUNCIL, Vote For 3**

N	PAUL GLENNIE	435 6.97%	357 8.70%	792 7.66%
N	DEAN GLASER	1,078 17.27%	607 14.80%	1,685 16.29%
N	JANELLE EGGER	681 10.91%	512 12.48%	1,193 11.53%
N	MIKE LOSEY	1,484 23.77%	908 22.14%	2,392 23.12%
N	SUE LONG	1,135 18.18%	791 19.28%	1,926 18.62%
N	TOM MULHOLLAND	464 7.43%	274 6.68%	738 7.13%
N	RON ALEXANDER	620 9.93%	430 10.48%	1,050 10.15%
N	MARY C. ASH	331 5.30%	217 5.29%	548 5.30%
	Unresolved Write-Ins	0 0.00%	0 0.00%	0 0.00%
	Unqualified Write-Ins	15 0.24%	6 0.15%	21 0.20%
<b>Cast Votes:</b>		6,243 84.66%	4,102 80.76%	10,345 83.07%
<b>Over Votes:</b>		36 1.46%	3 0.18%	39 0.94%
<b>Under Votes:</b>		1,023 13.87%	968 19.06%	1,991 15.99%

**RIO DELL CITY COUNCIL, Vote For 3**

N	JULIE WOODALL	360 28.89%	302 28.79%	662 28.85%
N	RICHARD LEO (BUD) LEONARD	269 21.59%	231 22.02%	500 21.79%
N	MELISSA A. MARKS	364 29.21%	286 27.26%	650 28.32%
N	MIKE DUNKER	233 18.70%	213 20.31%	446 19.43%
	Unresolved Write-Ins	0 0.00%	0 0.00%	0 0.00%
	Unqualified Write-Ins	20 1.61%	17 1.62%	37 1.61%
<b>Cast Votes:</b>		1,246 76.21%	1,049 75.04%	2,295 75.67%
<b>Over Votes:</b>		13 2.39%	1 0.21%	14 1.38%
<b>Under Votes:</b>		350 21.41%	346 24.75%	696 22.95%

**SOUTHERN HUMBOLDT COMMUNITY HEALTHCARE DISTRICT, Vote For 3**

N	BARBARA TRUITT	816 25.64%	1,280 25.20%	2,096 25.37%
N	GARY WELLBORN	463 14.55%	630 12.40%	1,093 13.23%
N	JUDITH GONZALES	374 11.75%	697 13.72%	1,071 12.96%
N	KEITH BROOKS	274 8.61%	453 8.92%	727 8.80%
N	MARY KRISSIE BRANZEI	422 13.26%	774 15.24%	1,196 14.48%
N	CORINNE STROMSTAD	456 14.33%	594 11.70%	1,050 12.71%
N	MICHAEL HOFFMAN	363 11.41%	638 12.56%	1,001 12.12%
	Unresolved Write-Ins	0 0.00%	0 0.00%	0 0.00%
	Unqualified Write-Ins	14 0.44%	13 0.26%	27 0.33%
<b>Cast Votes:</b>		3,182 80.99%	5,079 76.75%	8,261 78.33%
<b>Over Votes:</b>		6 0.46%	1 0.05%	7 0.20%
<b>Under Votes:</b>		729 18.55%	1,536 23.21%	2,265 21.48%

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675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532



To: Honorable Rio Dell City Council  
Through: Ron Henrickson, City Manager  
From: Kathy Cezario  
Date: November 18, 2010  
Subject: Ordinance 268-2010  
State Video Service Franchises Ordinance Implementing “DIVCA”  
The Digital and Video Competition Act of 2006

**RECOMMENDATION**

Receive Staff Report; open Public Hearing; make motion to close Public Hearing; make a motion for introduction and first reading (by title only) of Ordinance No. 268-2010 to adopt the State Video Service Franchises Ordinance Implementing “DIVCA” The Digital and Video Competition Act of 2006

**BACKGROUND AND DISCUSSION**

On September 29, 2006, the State Legislature passed, and Governor Schwarzenegger signed into law, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA largely replaces the local issuance of cable television franchises with a system in which video franchises are issued by the California Public Utilities Commission.

DIVCA did not abolish existing cable television franchises entered into prior to its adoption, and certain public protections and benefits are “grandfathered” under the new law. Current County franchises are in effect to 2014 for Suddenlink, and [Wave contract expiration date] Notably, DIVCA does provide circumstances under which a cable television provider may withdraw from a local franchise and enter into a State franchise.

In order to protect the interests of the County and local cities when local cable franchises are eventually superseded by State Video Service Franchises, Buske Group has prepared language for a new, DIVCA-compliant ordinance. This ordinance will supplement, not replace, the existing County ordinance adopted in 2004, with provisions that address: franchise fees; customer service; permits and construction; emergency alert system; and public, educational and government access channel capacity, support, interconnection, and signal carriage.

**ORDINANCE 268-2010**  
**STATE VIDEO SERVICE FRANCHISES ORDINANCE**  
**IMPLEMENTING "DIVCA",**  
**THE DIGITAL AND VIDEO COMPETITION ACT OF 2006**

**WHEREAS**, an ordinance adding Sections 114.57-114.64 (State Video Service Franchises ["DIVCA"]) to Chapter 5.30 of the Rio Dell Municipal Code, which implements the provisions of the Digital Infrastructure and Video Competition Act of 2006, codified in California Public Utilities Code Section 5800 *et seq.*, which the city is required to administer and enforce throughout the city.

**NOW, THEREFORE BE IT RESOLVED**, that the City Council of the City of Rio Dell does hereby approve Ordinance 268-2010

Section 1. The City Council of the City of Rio Dell does hereby add the following Sections to Chapter 5.30 of the Rio Dell Municipal Code.

**STATE VIDEO SERVICE FRANCHISES**

**SECTIONS:**

- 114.57        GENERAL PROVISIONS**
- 114.58        DEFINITIONS**
- 114.59        FRANCHISE FEES**
- 114.60        CUSTOMER SERVICE**
- 114.61        PERMITS AND CONSTRUCTION**
- 114.62        EMERGENCY ALERT SYSTEM**
- 114.63        PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNEL  
CAPACITY, SUPPORT, INTERCONNECTION, AND SIGNAL  
CARRIAGE**
- 114.64        NOTICES**

**114.57 GENERAL PROVISIONS**

(A). Purpose. This Section is applicable to video service providers who have been awarded a state video franchise under the California Public Utilities Code section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006 [“DIVCA”]), to provide cable or video services in any location(s) within the incorporated boundaries of the City. It is the purpose of this Section to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated there under that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.

(B). Rights Reserved.

(1). The rights reserved to the City under this Section 114.57 are in addition to all other rights of the City, whether reserved by this Chapter 114 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

(2). Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

(a). compliance with applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;

(b). any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and

(c). any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.

(3). No permit issued by the City to a state franchise holder is itself a franchise, nor shall any permit create a vested right that would prohibit the City from revoking or amending the permit.

(C). Compliance with City Ordinances. Nothing contained in Sections 114.57-114.64 shall be construed so as to exempt a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with these Sections 114.57-114.64 or California Public Utilities Code section 5800 *et seq.*, or any obligations under any franchise issued by the City insofar as those obligations may be enforced under California Public Utilities Code section 5800 *et seq.*

(D). Compliance with DIVCA. When a video service provider holding a state franchise provides notice to the City pursuant to 5840(m) of DIVCA that it is commencing to provide video service to the City, a holder of a local franchise is entitled to seek a state franchise pursuant to 5930 (c) and upon issuance of a state franchise by the California Public Utilities Commission for the franchise area the local franchise shall terminate.

#### **114.58 DEFINITIONS**

(A). Definitions Generally -- Interpretation of Language. For purposes of Sections 114.57-114.64 the following terms, phrases, words, and their derivations shall have the meaning given in this Section. Words not defined in this Section shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The words "shall" and "will" are always mandatory, but the use of those terms grants no private rights to any person with respect to the City. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(1.) "Gross revenues" means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the City.

(2.) "PEG access," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the City and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

(3.). "State franchise holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the incorporated limits of the City.

#### **114.59 FRANCHISE FEES**

(A). State Franchise Fees. Any state franchise holder operating within the incorporated areas of the City shall pay to the City a state franchise fee equal to five percent

(5%) of gross revenues that may be subject to a franchise fee under California Public Utilities Code section 5860.

(B). Payment of Franchise Fees. The state franchise fee required pursuant to this Section 114.59 shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or other means, which shall be agreed to by the City, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

(C). Examination of Business Records. The City may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

(D). Late Payments. In the event a state franchise holder fails to make payments required by this Section 114.59 on or before the due dates specified herein, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

#### **114.60 CUSTOMER SERVICE**

(A). Customer Service Standards. A state franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and, to the extent consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(B). Penalties for Violations of Standards. The City shall enforce the compliance of state franchise holders with respect to the state and federal customer service and consumer protection standards set forth in this Section 114.60. The City will provide a state franchise holder with a written notice of any alleged material breaches, as defined in California Public Utilities Code section 5900, of applicable customer service or consumer protection standards, and will allow the state franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied by a state franchise holder within the 30-day time period, irrespective of the number of customers affected, will be subject to the following penalties to be imposed by the City:

(1.). For the first occurrence of a material breach, a fine of \$500 may be

imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.

(2.). For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

(3). For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

(C). Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code section 5900.

#### **114.61 PERMITS AND CONSTRUCTION**

(A). Except as expressly provided in this Section 114.61, all provisions of Title XII Chapter 12.05 (Encroachment on City Streets) of the Rio Dell Municipal Code, and all City administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder on any City public rights-of-way, public property, or City easement.

(B). Permits. Prior to commencing any work for which a permit is required by Title XII Chapter 12.05, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Chapter 5.30 and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).

(C). The City of Rio Dell shall either approve or deny state franchise holder's application for any permit required under Title IX Chapter 98 within sixty (60) days of receiving a completed permit application from the state franchise holder.

(D). If the City of Rio Dell denies a state franchise holder's application for a permit, the City of Rio Dell shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

(E). A state franchise holder that has been denied a permit by final decision of the City of Rio Dell may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

(1.) Affirm the action of the City of Rio Dell without any further hearing; or

(2.) Refer the matter back to the City of Rio Dell for further review with or without instructions; or

(D). In rendering its decision on the appeal, the City Council shall not hear or consider

any argument or evidence of any kind other than the record of the matter received from the City of Rio Dell unless the City Council is itself conducting a public hearing on the matter.

(F). The issuance of a permit is not a franchise, and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law.

**114.62 EMERGENCY ALERT SYSTEM**

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network. As such capability was required under local franchises in effect in the City on January 1 to December 30, 2006 and as consistent with Public Utilities Code Section 5880, each state franchise holder shall install and maintain equipment to allow the Humboldt County Emergency Management Office to air audio and video messages on the video system to alert Subscribers to emergency situations. This capability shall be remotely activated without the assistance of the state franchise holder and shall allow a representative of the City to override the audio and video on all channels, except those where Grantee has, consistent with FCC regulations, agreed with the broadcaster, not to override the channel for EAS messages.

**114.63 PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNEL CAPACITY, SUPPORT, INTERCONNECTION, AND SIGNAL CARRIAGE**

(A.) PEG Channel Capacity.

(1.). A state franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of four (4) PEG channels to satisfy the requirement of Section 5870 of the California Public Utilities Code, within the time limits specified therein.

(2.). A state franchise holder shall provide an additional PEG channel when the City satisfies the standards set forth in Section 5870(d) of the California Public Utilities Code or any entity designated by the City to manage one or more of the PEG channels.

(B.) PEG Support.

(1). Amount of PEG Support Fee. Any state franchise holder shall pay to the City -- or if directed by the City, to the City's designated PEG provider -- a PEG fee equal to three (3%) percent of gross revenues, an amount equivalent to the level of PEG funding remitted by the incumbent cable operator to the City's designated PEG provider during the period of January 1, 2006 to December 30, 2006.

Title: State Video Service Franchises Ordinance

(2). The PEG support fee shall be used for PEG activities, in a manner that is consistent with the terms of the incumbent cable operator's franchise during the period of January 1, 2006 to December 30, 2006 and settlements.

(3). A state franchise holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.

(4). In the event that a state franchise holder fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchise holder shall pay interest at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

(C). PEG Carriage and Interconnection.

(1). As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), shall be capable of carrying a National Television System Committee (NTSC) television signal, and shall be carried on the state franchise holder's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

(2). Where technically feasible, each state franchise holder and each incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City may require the incumbent cable operator to allow each state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point of interconnection is available, each state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

**114.64 NOTICES**

(A). Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant are required to file with the California Public Utilities Commission.

(B). Unless otherwise specified in this Section, all notices or other documentation that a state franchise holder is required to provide to the City under this Section or the California Public Utilities Code shall be provided to both the City Manager and the City staff person in charge of cable and telecommunications, or their successors or designees.

(C). To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior city ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

(D). If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

(F). This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

**I HEREBY CERTIFY** that the foregoing Ordinance was duly introduced, passed and adopted at a regular meeting of the City Council of the City of Rio Dell, held on the 7<sup>th</sup> day of December, 2010 by the following vote:

AYES: Mayor Woodall, Councilmembers Barsanti, Dunker, Marks and Thompson  
NOES: None  
ABSENT: None  
ABSTAIN: None

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Julie Woodall, Mayor

ATTEST:

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Karen Dunham, City Clerk

SECOND READING (by title only) PERFORMED on 4<sup>th</sup> day of January, 2011 by the following vote:

AYES: Mayor Woodall, Councilmembers Barsanti, Dunker, Marks and Thompson  
NOES: None  
ABSENT: None  
ABSTAIN: None

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Julie Woodall, Mayor

ATTEST:

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Karen Dunham, City Clerk

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675 Wildwood Avenue  
Rio Dell, CA 95562



TO: Rio Dell City Council

THROUGH: Ron Henrickson, City Manager 

FROM: Karen Dunham, City Clerk

DATE: December 7, 2010

SUBJECT: Adoption of California Building Codes and Appendices and Update of the Rio Dell Municipal Code

**RECOMMENDATION**

Receive Staff Report; open Public Hearing; make motion to close Public Hearing; make a motion for introduction and first reading (by title only) of Ordinance No. 269-2010 to adopt the California Building Codes and appendices.

**BACKGROUND AND DISCUSSION**

In January, 2010, the State of California Building Standards Commission adopted codes with amendments based on the model uniform codes published by the International Code Council and published them as California codes. The new California of regulations, title 24, was published in July, 2010. The 2010 California Building Standards Codes (Codes) adopted by the Building Standards Commission went into effect 180 days after the July publication by the State. The Codes must be enforced by each City and County as of January 1, 2011.

The purpose of the codes is to establish the minimum requirements to safeguard the public health and general welfare through structural strength, means of egress facilities, stability, access to personas with disabilities, sanitation, adequate lighting and ventilation and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to fire fighters and emergency responders during emergency operations.

Each jurisdiction in California may either adopt these codes as written or may establish more restrictive building standards deemed necessary to address local climatic, geological, or topographical conditions. Staff is proposing a limited number of

administrative amendments to facilitate implementation of the codes by staff. Specific amendments are proposed to allow terms of clarification of permit expiration, engineering of commercial buildings to allow waiver by the Building Official, property survey waiver by the Building Official, and terms and clarification of violation of penalties.

All of the California Building Codes required to be adopted by the City of Rio Dell are listed in Exhibit B.

**ORDINANCE NO. 269-2010**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIO DELL  
ADOPTING CALIFORNIA BUILDING CODES AND APPENDICES AND  
REPEALING TITLE 15, CHAPTER 15.05.020 – BUILDING CODES OF  
THE RIO DELL MUNICIPAL CODE**

**WHEREAS**, the California Building Standards Commission is responsible for administering California’s building codes, including adopting, approving, publishing, and implementing codes and standards; and

**WHEREAS**, the California Building Standards Code is published every three years and amends the California Code of Regulations, Title 24; and

**WHEREAS**, these codes, based substantially on the model codes published by the International Code Council, are commonly referred to as the California Building Code (“Code”), and include, but are not limited to, building, plumbing, mechanical, electrical, fire and energy codes; and

**WHEREAS**, in January 2010, the State of California Building Standards Commission adopted many of these codes with amendments and published them as California codes; and

**WHEREAS**, the new California Code of regulations, Title 24, was published in July 2010. The State also adopted in January 2010 the following California codes specific to California: California Energy Code, California Administrative Code, California Existing Building Code, California Historical Code, and the California Green Building Standards Code; and

**WHEREAS**, the codes adopted by the Building Standards Commission go into effect 180 days after publication by the State and must be enforced by each City and County as of January 1, 1011.

**NOW, THEREFORE**, the City Council of the City of Rio Dell does hereby ordain as follows:

**SECTION 1. DECLARATION OF INTENT**

The purpose of this ordinance is to repeal, in its entirety, Chapter 15.05.020 Building Codes of Title 15 – Construction Codes of the Rio Dell Municipal Code and replace in its entirety with Ordinance No. 269-2010 including Exhibit B attached hereto and codified in this title, division and chapter and on file in the City Clerk’s office.

**SECTION 2. CONFLICTS**

All ordinances and parts of ordinances or resolutions, in conflict herewith, are hereby repealed to the extent of such conflicts and no further.

**SECTION 3. EFFECTIVE DATE**

The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

INTRODUCED AND FIRST READING (by title only) PERFORMED on the 7<sup>th</sup> day of December, 2010 by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Julie Woodall, Mayor

ATTEST:

\_\_\_\_\_  
Karen Dunham, City Clerk

SECOND READING (by title only) PERFORMED on the 4<sup>th</sup> day of January, 2011 by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Julie Woodall, Mayor

ATTEST:

\_\_\_\_\_  
Karen Dunham, City Clerk

## **EXHIBIT B**

The following California Building Codes are required to be adopted by the City of Rio Dell:

### **CALIFORNIA ADMINISTRATIVE CODE**

**2010** California Administrative Code (Part 1 of Title 24)

*Based on the 2009 International Building Code (IBC).*

### **CALIFORNIA BUILDING CODE**

**2010** California Building Code (Part 2 of Title 24), including Chapter 1 Division II (administration), and Appendices A (qualifications), C (agriculture), F. (rodent proofing), G (flood resistant), H (signs), I (patio covers), and J (grading)

*Based on the 2009 International Building Code (IBC).*

### **CALIFORNIA RESIDENTIAL CODE**

**2010** California Residential Code (Part 2.5 of Title 24) including Chapter 1 Division II (administration), and Appendices E (Manufactured Housing used as dwellings), G (swimming pools, spas, and hot tubs), J (existing building and structures), K, (sound transmission), N (venting methods), O (gray water recycling systems), P (sizing of water piping systems).

*Based on the 2009 International Residential Code (IRC).*

### **CALIFORNIA ELECTRICAL CODE**

**2010** California Electrical Code (Part 3 of Title 24)

*Based on the 2008 National Electrical Code (NEC)*

### **CALIFORNIA MECHANICAL CODE**

**2010** California Mechanical Code (Part 4 of Title 24), including Chapter 1 Division II (administration)

*Based on the 2009 Uniform Mechanical Code ((UMC)*

### **CALIFORNIA PLUMBING CODE**

**2010** California Plumbing Code (Part 5 of title 24), including chapter 1 Division II (administration)

*Based on the 2009 Uniform Plumbing Code (UPC)*

### **CALIFORNIA ENERGY CODE**

**2010** California Energy Code (Part 6 of Title 24), including Chapter I Division II (administration)

### **CALIFORNIA HISTORICAL BUILDING CODE**

**2010** California Historical Building Code (Part 8 of Title 24) including Chapter I Division II (administration)

**2010 California Historical Building Code (Part 8 of Title 24) including Chapter I Division II (administration)**

**CALIFORNIA FIRE CODE**

**2010 California Fire Code (Part 9 of Title 24), including Chapter I Division II (administration)**

*Based on the 2009 International Fire Code (IFC)*

**CALIFORNIA EXISTING BUILDING CODE**

**2010 California Existing Building code (Part 10 of Title 24)**

*Based on the 2009 International Existing Building Code (IEBC)*

**CALIFORNIA GREEN BUILDING STANDARDS CODE – “CAL Green”**

**2010 California Green Building Standards Code (Part I of Title 24) (Tier 1) including Chapter 1 Division II (administration)**

**CALIFORNIA REFERENCED STANDARDS CODE**

**2010 California Referenced Standards Code (Part 12 of Title 24)**

**1997 UNIFORM BUILDING CODE**

**1997 Uniform Housing Code**

Published by the International Conference of Building Officials as referenced by the California Department of Housing and Community Development and pursuant to the provisions of Section 17958, 17958.5, 17958.9, and 17959 of the California Health and Safety Code