

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered on October 1, 2018 ("Effective Date") by and between UKIAH VALLEY SANITATION DISTRICT, a county sanitation district ("DISTRICT"), on the one hand, and CITY OF UKIAH, a general law municipal corporation ("CITY"), on the other hand. The parties are, at times, collectively referred to herein as the "Parties."

RECITALS

A. A proceeding between the Parties is presently pending in Sonoma County Superior Court entitled *Ukiah Valley Sanitation District v. City of Ukiah*, case no. SCV 256737 ("the Action").

B. In the Action, the DISTRICT filed a complaint against CITY, as amended, and CITY filed a cross complaint against DISTRICT, both of which are pending.

C. CITY filed an application(s) with Mendocino LAFCO for a change in organization, including detachment of portions of the DISTRICT commonly known as the "Overlap Area." Said proceeding(s) is referred to hereafter as "Detachment Proceedings."

D. The Parties intend to execute, contemporaneously with this Settlement Agreement, the document entitled the Operating Agreement for the Combined Sewer System Serving the Ukiah Valley Sanitation District and the City of Ukiah ("Operating Agreement"), a true and correct copy of which is attached hereto and incorporated herein by reference as **Exhibit 1** (this Settlement Agreement is in turn attached as Exhibit 1 to the Operating Agreement).

E. Except as described in this Settlement Agreement and in the Operating Agreement, the Parties desire and intend to resolve all claims either had or may have against the other related to the Action and to dismiss, discharge, and release all claims arising therefrom.

F. These Recitals shall be deemed incorporated by reference into all portions, including the Terms, of this Settlement Agreement.

NOW, THEREFORE, in consideration of the Recitals and Terms of this Settlement Agreement and for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows.

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TERMS

1. **Operating Agreement.** Contemporaneous with execution of this Settlement Agreement, the Parties, and each of them, shall execute the Operating Agreement.

2. **CITY Payment to DISTRICT.** CITY shall transfer funds and pay to DISTRICT the monetary sum in combination totaling Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), which is in addition to any other sums previously paid or transferred to DISTRICT, as follows:

a. **CITY Transfers and Payments**

(1) \$2,515,689.80 shall be transferred and deposited by the CITY for the DISTRICT's use and benefit within thirty (30) days of the Effective Date ("Payment Deadline") in accordance with section 2.b.(1);

(2) \$984,310.20 shall be paid by CITY directly to DISTRICT within thirty (30) days of the Payment Deadline as specified in section 2.b.(2);

(3) \$4,000,000 shall be paid by CITY directly to DISTRICT in equal annual installments commencing on the one-year anniversary of the Payment Deadline as specified in section 2.b.(3).

b. **Terms and Conditions of the Transfer and Payments Required by Section 2 (a).**

(1) The CITY maintains approximately \$4,837,865.13 in unspent proceeds of the 2006 Bonds, as defined in the Operating Agreement, including interest accrued on said funds through August 31, 2018. Those proceeds are presently reported by CITY in its Sewer Bond Debt Service Fund (Fund No. 841). Each party is entitled to the full use and benefit of a share of said funds for purposes of prepaying its share of the bond debt. As of August 31, 2018, the DISTRICT share is 52% of the funds in Fund 841, totaling \$2,515,689.80 ("DISTRICT Share") and the CITY share is 48%, totaling \$2,322,175.33 ("CITY Share"). The DISTRICT's and CITY's debt service obligation as of the Effective Date is 52% and 48%, respectively. The CITY shall transfer the entire balance in Fund 841 together with interest accrued as of August 31, 2018, totaling \$4,837,865.13, together with any additional interest properly credited to those funds through the date of transfer,¹ to the City of Ukiah 2006 Installment Payment Fund held by the Bond Trustee pursuant to Section 4.4(b)

¹ The total amount transferred shall be finalized upon issuance of the 2017-18 audit but shall not affect the amount of the City's payment under Section 2.a(2). Said interest shall be applied to prepay bonds but shall not be credited to either the DISTRICT's or CITY's Share.

of the Installment Sales Agreement as defined in the Operating Agreement ("ISA"), to be used exclusively to make optional prepayments of the principal amount due on Installment Payments pursuant to Section 7.2 of the ISA in accordance with Section 2.03 of the Indenture of Trust between ABAG and Wells Fargo Bank, dated March 1, 2006 ("Indenture"). Other CITY and DISTRICT funds must be used to pay any accrued interest due on prepaid bonds. The Bond Trustee shall be irrevocably instructed not to disburse the deposited funds for any purpose or in any manner other than as specified herein. Bond prepayments shall occur in connection with a refinancing of the 2006 Bonds or, in the absence of a refinancing, at the earliest date specified by either the CITY or the DISTRICT. Notwithstanding the prepayment of bond debt as provided herein, the Parties shall share debt service as provided Section II.D.2.b of the Operating Agreement; provided, however, that in the event a reorganization is proposed, including through the Detachment Proceedings, the Parties shall ensure, as provided in Section 6.b, that the DISTRICT and CITY shall each receive the full benefit and use of the DISTRICT's Share and CITY's Share, respectively, against the total principal amount of bond debt for which that party is obligated.

(2) By no later than the Payment Deadline the monetary sum equal to (a) \$7,500,000 less (b) \$4,000,000 less (c) the sum transferred for the DISTRICT's Share (the sum of which equals \$984,310.20) shall be paid by the CITY directly to the DISTRICT from CITY funds in which CITY, and not DISTRICT, has the sole legal interest ("CITY funds").

(3) The CITY shall pay the DISTRICT \$4,000,000 in equal annual payments of \$1,000,000 each, commencing one year after the Payment Deadline and continuing on the same day and month each year thereafter until the balance plus interest is paid in full. So long as timely paid, interest shall accrue on the entire unpaid balance at the rate of three percent (3%) per annum commencing on the one-year anniversary of the Payment Deadline. CITY payments shall be made solely from CITY funds. If the initial installment is not paid when due, interest at the 3% annual percentage rate shall accrue on that installment from the Payment Deadline until that installment is paid in full. If any subsequent installment payment is not paid when due, interest on the unpaid portion of that installment payment shall accrue from the payment due date until that installment is paid in full at the legal rate.

3. **Dismissal of Action with Reservation of Jurisdiction.** Within five (5) business days of the Court entering an order on joint request of the Parties to maintain jurisdiction to enforce this Settlement Agreement notwithstanding dismissal, the Parties shall jointly execute a dismissal of the entire action with prejudice of all parties and all causes of action. The Parties agree that said dismissal shall not prejudice or otherwise affect either party's rights as provided in Section 6. Further, notwithstanding the dismissal, the court in which the Action is proceeding shall maintain jurisdiction, pursuant to *Code of Civil Procedure* section 664.6, to enforce the

terms of this Settlement Agreement to the extent dispute resolution is not otherwise provided in this Agreement.

4. **Releases.**

a. **CITY Release.** Except as otherwise provided in this Settlement Agreement and except with respect to DISTRICT's obligations under this Settlement Agreement and in the Operating Agreement, CITY (including its agents, representatives, officers, directors, employees, affiliates, principals, predecessors, successors, and assigns), hereby releases DISTRICT (and all its agents, representatives, officers, directors, employees, affiliates, principals, predecessors, successors, and assigns) from any and all claims, demands, obligations, costs, expenses, liabilities, causes of action, or rights or interests otherwise—however any of the same may be characterized ("Claims")—which CITY now has or may have against DISTRICT regarding, relating to, or arising from the Action.

b. **DISTRICT Release.** Except as otherwise provided in this Settlement Agreement and except with respect to CITY's obligations under this Settlement Agreement and in the Operating Agreement, DISTRICT (including its agents, representatives, officers, directors, employees, affiliates, principals, predecessors, successors, and assigns), hereby releases CITY (and all its agents, representatives, officers, directors, employees, affiliates, principals, predecessors, successors, and assigns) from any and all Claims which DISTRICT now has or may have against CITY regarding, relating to, or arising from the Action.

c. The releases contained herein are collectively referred to as "Released Claims."

5. **Unknown Claims.** Except as excluded in this Settlement Agreement and except with regard to the Parties' respective obligations under this Settlement Agreement and in the Operating Agreement, the Parties, and each of them, acknowledge reading and advisement of the provisions of California Civil Code section 1542 (and similar laws of other jurisdictions) and extend the Released Claims to unknown claims otherwise excluded by that section, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

With respect to the Released Claims, each party acknowledges there is a risk that, subsequent to the execution of this Settlement Agreement, it will or may incur damage or loss that it may deem in some way attributable to the Released Claims, but which are unknown and unanticipated at the time this Settlement Agreement is

executed, or that damages presently known may become progressive, greater, different, or more serious than is now known, expected or anticipated, or that facts related to the Released Claims are found hereafter to be in addition to or different from the facts now believed true. Each party accepts such risks and agrees this Settlement Agreement, including these releases, shall remain effective notwithstanding such risks should they materialize.

6. Exclusion from Releases.

The releases contained in this Settlement Agreement, including the Released Claims, shall not extend to:

a. any Claims based on matters revealed by, or adjusted in the process of producing, the 2016-2017 or 2017-2018 CITY audits of the CITY's Wastewater Enterprise, and which were not plainly revealed, in the absence of said audits, by financial or other records obtained by the DISTRICT prior to the Effective Date of this Settlement Agreement. The releases shall apply to and preclude Claims included in the Binder A-2 (Work Product Binder) produced by William Holder for his deposition and shall preclude Claims by either Party for revenue from sewer service fees paid by the County for sewer service to the County jail through fiscal year ending June 30, 2018 (CITY represents DISTRICT has been credited with such revenue from July 1, 2015-June 30, 2018);

b. either party exercising the provisions of the Operating Agreement that authorize them to oppose on any legal, equitable, or factual basis a reorganization proposed by either party, including the Detachment Proceedings and to prevent any diminution in the financial benefit to either party under Section 2.a(1) and 2.b(1) resulting from a proposed reorganization, including the Detachment Proceedings.

Any such dispute under Section 6.b shall be resolved as provided in Section F of the Operating Agreement and under Section 6.a pursuant to Section II.G.2 of the Operating Agreement.

Except as provided in the attached Exhibit 1, this release does not apply to or preclude any Claims by either party regarding any conduct, including conduct similar to or the same as that embraced by the Action, occurring after the Effective Date.

7. Attorney's Fees & Costs. CITY and DISTRICT shall each bear its own attorneys' fees, costs, and expenses incurred related to the Action.

8. Warranty of Authority. The Parties, and each of them, warrant and represent that it has not initiated or heretofore assigned or transferred, or purported to assign or transfer, to any person or entity not a party hereto, any Released Claim (or any part or portion thereof) and agrees to indemnify and hold the other harmless from and against any claim based on, related to, in connection with, or arising out of any such assignment or transfer or purported or claimed assignment or transfer. Individuals executing this Settlement Agreement represent and warrant they maintain

express authority of the party they represent to execute this Settlement Agreement and thereby bind said party to its terms.

9. **Disclaimer of Liability.** The Parties have entered this Agreement to avoid the further expense and uncertainty of litigation and acknowledge and agree that execution of this Settlement Agreement is the result of their compromise of disputed claims and defenses and shall not be considered or admissible as an admission of liability or wrongdoing for any purpose.

10. **Binding Effect.** This Settlement Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties hereto. Nothing in this Settlement Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto or their respective successors and assigns, any rights or benefits under or by reason of this Settlement Agreement.

11. **Severability.** In the event a provision of this Settlement Agreement, or portion thereof, is determined unenforceable, the remainder hereof shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law, except that no release of any kind shall be effective absent compliance with sections 1-2 above.

12. **Cooperation.** The Parties, and each of them, shall promptly act to facilitate the provisions of this Settlement Agreement and will promptly comply with all reasonable requests necessary to carry out its terms.

13. **Survival of Rights.** Notwithstanding the releases contained herein, all rights and obligations of the Parties, and each of them, created under or pursuant to this Settlement Agreement and/or the Operating Agreement, shall survive execution of this Settlement Agreement.

14. **Integration Clause.** This Settlement Agreement represents and contains the entire agreement and understanding among the Parties hereto with respect to the subject matter of this Settlement Agreement, and supersedes any and all prior oral and written agreements and understandings, and no representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the Parties unless incorporated herein or contained in the Operating Agreement. This Settlement Agreement may not be amended or modified except by an express written agreement signed by the Parties.

15. **Construction.** This Settlement Agreement shall be interpreted under the laws of the State of California, except that no law, statutory or otherwise, that would construe language against a drafting party shall be applied or effective. This Settlement Agreement shall be construed as, and shall be deemed, drafted by each party hereto.

16. **Representation.** The Parties, and each of them, acknowledge entering this Settlement Agreement voluntarily and of their own free will, absent coercion or duress and, further, with legal representation of that party's choice.

17. **Execution.** This Settlement Agreement shall be executed in duplicate form thereby ensuring an original of it is maintained by each party.

IN WITNESS WHEREOF, the Parties have entered this Settlement Agreement on the Effective Date and have executed this Settlement Agreement on the dates indicated below.

CITY OF UKIAH

Dated: October 2, 2018


KEVIN DOBLE - MAYOR

Dated: October 2, 2018

ATTEST:


KRISTINE LAWLER - CITY CLERK

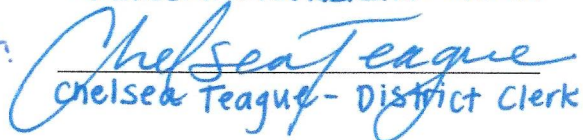
UKIAH VALLEY SANITATION DISTRICT

Dated: October 3, 2018


THERESA M. MCNERLIN - CHAIR

Dated: October 3, 2018

Attest:


Chelsea Teague - District Clerk

Approved as to form:

Dated: October 2, 2018


DAVID RAPPORT, CITY ATTORNEY

Dated: October 3, 2018

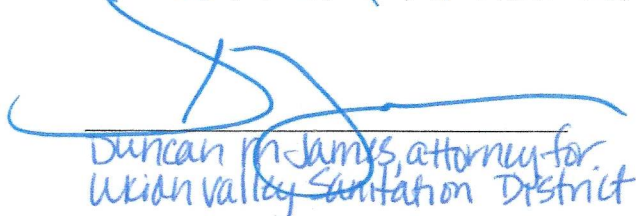

Duncan McJames, attorney for
Ukiah Valley Sanitation District

EXHIBIT 1