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ENDORSED-FILED

DEC 19 2014

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

C. Recondiz

Attorneys for

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO, UKIAH BRANCH

UKIAH VALLEY SANITATION DISTRICT,
a Public Agency,

Plaintiff,

vs.

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

Defendants.

CASE NO.: SCUK CVG 13-63024

EXHIBITS TO FIRST AMENDED
COMPLAINT FOR DECLARATORY
RELIEF ON WRITTEN CONTRACT (4
counts); PRELIMINARY AND
PERMANENT INJUCTION ; BREACH OF
CONTRACT (3 counts); BREACH OF
FIDUCIARY DUTY (3 counts);
RESCISSION AND RESTITUTION (2
counts)

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PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Mendocino. I am over the age of eighteen years and not a party to the within above entitled action; my business address is 445 N. State Street, Ukiah, CA 95482. On December 19, 2014, I served the within EXHIBITS TO FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF ON WRITTEN CONTRACT (4 counts); PRELIMINARY AND PERMANENT INJUNCTION ; BREACH OF CONTRACT (3 counts); BREACH OF FIDUCIARY DUTY (3 counts); RESCISSION AND RESTITUTION (2 counts) on the parties in this action as follows:

David J. Rapport, Esq.
Rapport & Marston
405 W Perkins St
Ukiah, CA 95482

XXX By Personal Delivery. I caused each such envelope to be personally delivered to the above named.

By Mail. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Ukiah, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one date after date of deposit for mailing in affidavit.

By Overnight Delivery – I enclosed the documents in an envelope or package provided by an overnight deliver carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

By Electronic Service - Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

By Facsimile. I caused each such document to be transmitted by facsimile to the number listed above.

I, Nicky Lopez, declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of December, 2014, at Ukiah, California.


Nicky Lopez

EXHIBIT “A”

A G R E E M E N T

THIS AGREEMENT, made this 26th day of March 1955, in duplicate by and between the CITY OF UKIAH, California, hereinafter referred to as "The City", and the UKIAH VALLEY SANITATION DISTRICT, by and through its Board of Directors, hereinafter referred to as "The District",

WITNESSETH:

That Whereas, the UKIAH VALLEY SANITATION DISTRICT was duly created and formed by the Board of Supervisors of Mendocino County on July 6th, 1954, for the purpose of providing sewerage facilities for the rapidly growing unincorporated areas suburban to the City of Ukiah, and

Whereas, the CITY OF UKIAH is faced with an immediate need for greatly expanded sewage disposal facilities for present and future sewerage disposal requirements, and

Whereas, both of the contracting parties have made studies of the problem from the standpoint of cost, present and future needs and feasibility and have concluded that joint facilities will best subserve the interests of the said CITY OF UKIAH and of the UKIAH VALLEY SANITATION DISTRICT and of the inhabitants thereof,

NOW, THEREFORE, The parties hereto agree as follows:

1. The CITY OF UKIAH hereby agrees, subject to availability of necessary financing, to purchase and acquire land for the construction of, and to construct, build and erect a sewage treatment and disposal plant adequate for the treatment and disposal of sewage collected from the CITY OF UKIAH and the UKIAH VALLEY SANITATION DISTRICT. Said plant shall be located in the area south of Morgard Lane at a

position to be agreed upon by the contracting parties.

2. The CHIM VALLEY SANITATION DISTRICT hereby agrees, subject to availability of necessary financing, to construct a sewerage trunk line extending from Ford Road, northernly of the City of Ukiah to the treatment plant referred to in Paragraph 1 hereof, adequate to serve both the DISTRICT and the CITY.

3. Provided, however, that Paragraphs 1 and 2 hereof shall be limited as follows:

The CITY shall expend up to \$600,000.00 toward the objects set forth in Paragraph 1 hereof without participation from the DISTRICT. All costs in excess of \$600,000.00, however, shall be borne by the CITY and the DISTRICT in the following proportions: Two-thirds by the CITY and one-third by the DISTRICT. Provided, further, that the DISTRICT shall expend up to \$300,000.00 for the objects and purposes set forth in Paragraph 2 hereof without participation from the City, provided, however, that any cost in excess of \$300,000.00 will be borne by the CITY and the DISTRICT jointly on the following proportions: Two-thirds by the CITY and one third by the DISTRICT.

4. Annual costs for treatment, including maintenance, expansion, and operation of the treatment plant and trunk sewer shall be apportioned between the CITY and the DISTRICT, based upon the proportionate number of sewage connections. Replacement and repair of said treatment plant shall be treated as maintenance and not capital outlay, and the DISTRICT shall not be charged with costs of amortization of said treatment plant.

5. The title, management and control of said sewerage treatment plant shall remain in the CITY OF UKIAH. The CITY shall maintain said plant and furnish personnel for the maintenance,

operation and control of said plant. CITY also agrees to service and maintain the tank line.

6. It is further understood and agreed that the CITY will not contract with any persons, firms, or corporations in the unincorporated area who are not in the SANITATION DISTRICT for treatment of sewage for said persons, firms, or corporations without the consent of the DISTRICT.

7. It is further understood and agreed that the DISTRICT will not contract with any person, firm, or corporation outside said SANITATION DISTRICT for treatment of sewage for said persons, firms, or corporations without the consent of the CITY.

8. To carry out the purposes of this Agreement, the board of directors of the DISTRICT and the city council of the CITY OF UTAH shall meet together at such times and places as they shall agree, but in any event at least once every three months after the effective date of this Agreement.

9. The term of this Agreement shall be Forty (40) years.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first hereinabove written.

UTAH VALLEY SANITATION DISTRICT

By Paul W. Bunker

By Joseph E. Smith

By Wm. H. Bunker

CITY OF UTAH,

By Alman Bunker

WITNESSES: W. H. Bunker
City Clerk.

EXHIBIT “B”

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of July, 1958, by and between CITY OF UKIAH, herein called "City", and UKIAH VALLEY SANITATION DISTRICT, herein called "District",

W I T N E S S E T H:

WHEREAS, on July 22, 1955, the parties hereto made and entered into an agreement for the joint use and operation of sanitary sewage disposal facilities, independently constructed; and

WHEREAS, no provision was made therein for connecting the sewage facilities of one party to those of the other;

NOW, THEREFORE, IT IS AGREED, as follows:

10. Each party may connect the sewage collector mains and house laterals which it has or may hereafter construct to the sewage collector mains which have or may hereafter be constructed by the other, at points mutually agreeable to the City Engineer or other representative of the City designated therefor by the City Council of City and to the District Engineer or other representatives of the District designated therefor by the Board of Directors of District; provided, however, that the line to which said connection is to be made shall have installed and also such additional connection or connections.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

CITY OF UKIAH

By: /s/ Roy C. Wagner
Mayor

ATTEST: A. Dahlberg

UKIAH VALLEY SANITATION DISTRICT

/s/
By: Jos. Scaramella
Chairman UVSD-6534

Attest: /s/ Edith Peck

EXHIBIT “C”

SUPPLEMENTAL AGREEMENT

THIS AGREEMENT, made and entered into this 20th day of July, 1958, by and between CITY OF UKIAH, herein called "City", and UKIAH VALLEY SANITATION DISTRICT, herein called "District",

W I T N E S S E T H:

WHEREAS, on July 22, 1955, the parties hereto made and entered into an agreement for the joint use and operation of sanitary sewage disposal plant and major trunk sewer system, independently constructed; and

WHEREAS, it appears advantageous to both parties to have the functions of maintenance and operation of the collection system of the District centrally handled by the City;

NOW, THEREFORE, the Parties hereto agree as follows:

11. The City agrees to undertake the maintenance, operation and repair of the sewerage collection system of the District, and of any additions, extensions or improvements thereto which may at any time be made, and to furnish personnel therefor, and that such maintenance and operation shall include the construction of all sewer laterals to the property line and connections which may be made to said collection system; provided, however, that this shall include inspection, only, in the event that, pursuant to regulations relating to subdivisions, permits are granted for the construction of public sewers by authorized contractors.

12. The City further agrees that such maintenance, operation and repair shall be in accordance with the rules, regulations and ordinances of the District applicable thereto as the District may from time to time adopt.

13. The District will establish such rules, regulations and ordinances for the use of public sewers and drains, the installation and connection of building sewers, the installation of sewer laterals and public sewer main extensions, the discharge of waters and wastes into the public sewer system, and establishing fees and charges therefor, as shall be reasonably consistent with the rules, regulations and ordinances for such purposes as have been established, or may be established, by the City.

14. The District will establish such fees and charges as will be sufficient to reimburse the City for its actual costs of issuance of permits and cost of inspection, which actual costs are hereby agreed presently to be as follows:

- | | |
|--------------------|---------|
| (a) Permit Fee | \$ 3.00 |
| per connection | |
| (b) Inspection Fee | \$ 5.00 |
| per connection | |

The above listed permit and inspection fees are intended to represent the actual cost of such services to the City. The City agrees that it will maintain full and complete accounting records on such services which will allow the review of such charges no less than once each year so they may at all times reflect such actual cost.

15. None of the charges enumerated in paragraph 14 above shall be made until the elapse of ninety (90) days from the date of acceptance of that portion of the collection system of the

District, constructed pursuant to Local Improvement District No. 1, to which the connection is made, but such period shall in no event extend beyond July 1, 1959.

16. The City shall receive as payment for any billing or collection services it may render for and on behalf of the District a sum which shall equal ten per cent (10%) of the amounts so billed for sewer service charges.

17. The District will pay the City the actual cost of any services provided by the City for which a specific fee is not set forth herein or provided for by separate agreement.

18. The City will maintain complete records and accounts relating to costs and expenditures made pursuant to, or in connection with, this agreement and of all sewer service charge revenues which it may have collected for and on behalf of the District and it will make reports thereof to the District monthly or semi-monthly, in accordance with the billing period which may be established by the City, no later than fifteen (15) days following the close of such billing period; promptly thereafter, and on the approval thereof by the District, the City shall pay to the District any surplus that shall remain.

19. The provisions herein added to the agreement of July 22, 1955, or any amendments to said provisions are subject to deletion by either party after the giving of no less than six (6) months written notice to the other.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first hereinabove written.

UKIAH VALLEY SANITATION DISTRICT

By [Signature]
Director

By [Signature]
Director

By [Signature]
Director

CITY OF UKIAH

By [Signature]
Mayor

ATTEST:

[Signature]
City Clerk

EXHIBIT “D”

THIRD SUPPLEMENTAL AGREEMENT

1 THIS AGREEMENT, made and entered into this 14th day of
2 December, 1966, by and between the CITY OF UKIAH, herein called
3 "CITY", and the UKIAH VALLEY SANITATION DISTRICT, herein called
4 "DISTRICT",

5 W I T N E S S E I H :

6 1. RECITALS. The parties hereto have by contract dated June 29,
7 1955, as amended by supplemental agreements dated July 7, 1958
8 and October 20, 1958, provided for the construction, operation
9 and maintenance of sewage disposal facilities consisting of a
10 treatment plant and trunk sewer lines as a joint project, and
11 for maintenance, operation and repair of DISTRICT lines and
12 laterals by CITY under certain terms, and for collection of fees
13 and charges by CITY for DISTRICT, and for other services to be
14 performed ^{for} ~~by~~ DISTRICT by CITY, all as set forth in said contract
15 and the supplements thereto; and,

16 Whereas, the parties desire to continue such joint partici-
17 pation but to modify certain charges and methods of apportioning
18 payments so as to more accurately reflect the original intent of
19 the parties to provide an equitable apportionment of costs and
20 to provide for future adjustments when necessary, all in accord-
21 ance with the terms herein expressed.

22 2. Paragraph 4 of the agreement dated June 29, 1955 is amended
23 to read as follows:

24 "4. Annual costs for treatment, including maintenance,
25 expansion, and operation of the treatment plant and trunk sewer
26 shall be apportioned between the CITY and DISTRICT in each year
27 based upon the projected ratio of CITY-DISTRICT sewer connections
28 for each year of operation from and after January 1, 1967 as set
29 forth in the projection prepared by Brown and Caldwell, Consulting
30 Engineers and contained in the City of Ukiah Prospectus for
31 \$800,000 Sewer Revenue Bonds of 1957 at page 16, column 6, with
32 CITY to bear that percentage of such total costs as is set forth

1 in said column 6 of such projection, and DISTRICT to bear that
2 percentage of such total costs as represents the difference between
3 the amount set forth in column 6 of such projection and the total
4 of one hundred per cent (100%).

5 The parties agree to annually review the actual ratio of sewer
6 connections as compared to the projection, and to adjust the cost
7 apportionment whenever the ^{ACTUAL} ~~active~~ ratio deviates by more than 10%.
8 from the projected ratio.

9 Replacement and repair of said treatment plant shall ^{Net} be treated
10 as capital outlay, and the DISTRICT shall not be charged with
11 amortization of said treatment plant.

12 3. Paragraph 16 of the Agreement added by the Supplemental Agree-
13 ment dated October 20, 1958 is amended to read as follows:

14 "16. The City shall receive as payment for any billing or
15 collection services it may render for or on behalf of the District
16 a sum which shall equal twenty per cent (20%) of the amounts so
17 billed for sewer service charges."

18 IN WITNESS WHEREOF the parties hereto have hereunto set their
19 hands the day and year first hereinabove written.

20 UKIAH VALLEY SANITATION DISTRICT

21
22 By Harvey Rogers
23 By Robert J. [unclear]
24 By Stirling [unclear]
25
26

27 CITY OF UKIAH

28 By Stirling Rogers
29 MAYOR

30 ATTEST:

31 John M. [unclear]
32 CITY CLERK

EXHIBIT “E”

FOURTH SUPPLEMENTAL AGREEMENT

1 THIS AGREEMENT, made and entered into this 6th day of February,
2 1985, by and between the CITY OF UKIAH, herein called "CITY," and the UKIAH
3 VALLEY SANITATION DISTRICT, herein called "DISTRICT,"

W I T N E S S E T H:

4
5 WHEREAS, the parties hereto have by contract dated June 29, 1955, as
6 amended by Supplemental Agreements dated July 7, 1958, October 20, 1958 and
7 December 14, 1966, provided for the construction, operation and maintenance
8 of sewage disposal facilities consisting of a treatment plant and trunk sewer
9 lines as a joint project, and for maintenance, operation and repair of
10 DISTRICT lines and laterals by City under certain terms, and for collection
11 of fees and charges by CITY for DISTRICT, and for other services to be
12 performed for DISTRICT by CITY, all as set forth in said contract and the
13 supplements thereto; and,

14 WHEREAS, the parties desire to continue such joint participation but to
15 modify certain charges and methods of apportioning payments so as to provide
16 a more equitable apportionment of costs and to provide for future adjustments
17 when necessary, all in accordance with the terms herein expressed.

18 1. Paragraph 4 of the Agreement dated July 29, 1955 as amended in the
19 Third Supplemental Agreement dated December 14, 1966 is further
20 amended to read as follows:

21 "4. Annual costs for treatment, including maintenance, operation,
22 expansion, upgrading, administration, and financial services of the
23 entire sewerage system (treatment plant, trunk sewer, and col-
24 lection system) shall be apportioned between the CITY and DISTRICT
25 in each year based upon the ratio of CITY-DISTRICT sewer service
26 units for each year of operation from and after July 1, 1985. For
27 the purposes of this Agreement, one sewer service unit is defined
28 as being a single unit of sewer discharge having characteristics of

1 flow, B.O.D. and suspended solids equivalent to that generated and
2 discharged by a typical single family residential unit. The City
3 shall be the paying and receiving agent for all District operation
4 and maintenance funds.

5
6 Cost apportionment between CITY and DISTRICT as described above
7 shall be adjusted annually at the beginning of each fiscal year of
8 operation based upon the ratio of CITY-DISTRICT equivalent sewer
9 service units on record as of March 31 each year."

- 10 2. Paragraph 16 of the Agreement dated June 29, 1955 as amended by the
11 Supplemental Agreement Dated December 14, 1966, is hereby deleted.

12 IN WITNESS WHEREOF the parties hereto have hereunto set their hands the
13 day and year first hereinabove written.

14 UKIAH VALLEY SANITATION DISTRICT

15
16 By: Charles S. Nye
17 Chairman

18
19 ATTEST:

20 Virginia Goodacre
21 Secretary

22 CITY OF UKIAH

23
24 By: Charles S. Nye
25 Mayor

26 ATTEST:

27 R. Kent Payne
28 City Clerk

EXHIBIT “F”

PARTICIPATION AGREEMENT BETWEEN
THE CITY OF UKIAH
AND
THE UKIAH VALLEY SANITATION AGREEMENT

THIS AGREEMENT is made this 19th day of July, 1995, between the CITY OF UKIAH, California, hereinafter referred to as "CITY," and the UKIAH VALLEY SANITATION DISTRICT, hereinafter referred to as "DISTRICT."

PREMISES

The Ukiah Valley Sanitation District was duly created and formed by the Board of Supervisors of Mendocino County on July 6, 1954, for the purpose of providing sewage facilities for the unincorporated areas suburban to the City of Ukiah.

The City of Ukiah has need for continuing operation of the sewage disposal facilities to satisfy the present and future sewage disposal requirements of its inhabitants, and

Both CITY and DISTRICT have determined that present and future needs will best be served through the operation of joint facilities and that these facilities will best serve the interests of the City of Ukiah and the Ukiah Valley Sanitation District and the inhabitants thereof.

AGREEMENT

CITY and COUNTY agree as follows:

1. The annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation. For the purpose of this Agreement, one sewer unit is defined as being a single unit of sewer discharge having characteristics of flow, B.O.D. and suspended solids equivalent to that generated and discharged by a typical single family residential unit. CITY shall be the paying and receiving agent for all DISTRICT operation and maintenance funds. Cost apportionment between CITY and DISTRICT as described above shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY to DISTRICT equivalent sewer service units on record as of March 31 each year.

2. CITY shall obtain and maintain liability and property loss insurance coverage in the sum of \$5,000,000 to protect DISTRICT and CITY against claims or losses, naming both DISTRICT

and CITY as insured parties. Nothing in this paragraph or this Agreement is intended to have the effect of making either party, or its officials, agents or employees liable for the torts, contracts or other obligations or debts of the other; provided, however, that DISTRICT's insurance shall cover CITY employees for claims arising out of such CITY employees performance of services under this Agreement.

3. The title, management and control of the sewer treatment plant and any additions or changes to it shall remain in CITY. CITY shall maintain said plant and furnish personnel for the maintenance, operation and control of said plant. CITY shall also service and maintain the trunk lines and collection lines.

4. CITY will not contract with any person, firm, or corporation outside DISTRICT's boundaries for treatment of sewage for said persons, firms, or corporations without the consent of DISTRICT.

5. DISTRICT will not contract with any person, firm, or corporation outside DISTRICT's boundaries for treatment of sewage for said persons, firms, or corporations without the consent of CITY.

6. To carry out the purpose of this Agreement, the Board of Directors of DISTRICT and the City Council of CITY shall meet together at such times and places as they shall agree, but in any event at least once a year beginning with the effective date of this Agreement.

7. The term of this Agreement shall be thirty (30) years. CITY or DISTRICT may cancel this Agreement by giving the other party five (5) years advance written notice.

8. CITY or DISTRICT may connect the sewage collector mains and house laterals which have or may hereafter be constructed by the other, at points mutually agreeable to the City Engineer or other representative of CITY and to the District Engineer or other representative of DISTRICT.

9. CITY shall operate, maintain and repair DISTRICT's sewage collection system, including all sewer mains and laterals constructed within the DISTRICT as part of its sewer collection system. CITY shall maintain the system in good repair, and shall make all required repairs within a reasonable period of time. As part of its obligation under this Agreement, CITY shall construct all required sewer laterals for new connections from the nearest main to the property line. If a subdivider is required to install sewer lines as a condition of the subdivision's approval, CITY shall be required to inspect the construction of those lines to insure compliance with DISTRICT standards, but CITY shall not be required to construct the lines or contract for their construction.

10. CITY shall provide such maintenance, operation and repair in accordance with the rules, regulations and ordinances of DISTRICT applicable thereto as DISTRICT may from time to time adopt.

11. DISTRICT will establish by ordinance or resolution, as appropriate, such rules and regulations as are necessary for the orderly administration of DISTRICT's system. These rules and regulations shall include the use of the public sewers and drains, the installation of sewer lines and connections in buildings, the installation of sewer laterals and public sewer mains and the extension of these, the discharge of waters and wastes into the public sewer system, and sewer fees and charges, including connection fees, service fees, and capacity charges.

12. DISTRICT will establish such fees and charges as will be sufficient to reimburse CITY for its actual costs of issuance of permits and cost of inspection. CITY shall maintain full and complete accounting records on such services, which will allow the review of such charges not less than once each year so they may at all times reflect such actual costs.

13. CITY will maintain complete records and accounts relating to costs and expenditures made pursuant to or in connection with this Agreement, and of all sewer service revenues which it may have collected.

The parties hereto have set their signatures below.

CITY OF UKIAH

By Freddie Phuntter
Mayor

UKIAH VALLEY SANITATION DISTRICT

By Frank Mc Michael
Chairperson

ATTEST:

Cathy Wilkey
City Clerk

Kristen Ayer
Clerk of the Board

EXHIBIT “G”

SEWER SERVICE AGREEMENT

This Agreement is entered into on this 16th day of October, 1996, at 12:00 p.m., by and between the City of Ukiah ("City"), a general law municipal corporation, with its principal place of business located at Ukiah Civic Center, 300 Seminary Avenue, Ukiah, California 95482, and the Ukiah Valley Sanitation District ("District"), a political subdivision of the State of California, with its principal place of business located at Ukiah Civic Center, 300 Seminary Avenue, Ukiah, California 95482. Collectively, the District and the City shall be referred to in this Agreement as the "Parties."

RECITALS

1. City operates the Ukiah Solid Waste Site, a solid waste disposal facility (hereinafter "landfill"), located upon Assessor's Parcel Number 178-130-01, adjacent to but outside the boundaries of District and City.
2. City owns and operates a separate sewage treatment plant, located upon Assessor's Parcel Numbers 180-100-02, 180-100-03, and 180-100-05. City contracts with District (1) to treat sewage originating within District boundaries, and (2) to operate and maintain the District's trunk lines and laterals.
3. Under their agreement, both City and District must agree before either party can contract with any person outside District boundaries for treatment of sewage.
4. City has determined that the best and most appropriate method for disposing of leachate which cannot be stored at the landfill is to process and treat such leachate through the sewage treatment plant by use of a pipeline connecting such landfill leachate collection system to District's nearby sewer trunk line located along Vichy Springs Road, which connects to the sewage treatment plant.
5. Government Code Section 56133 exempts from approval by the Local Agency Formation Commission any agreement between two public agencies, such as City and District, for the provision of a service by one public agency to the other.

NOW, THEREFORE, based upon the above recitals, and the mutual promises contained herein, the Parties hereby agree as follows:

1. District authorizes City to construct at City's sole cost and expense a pipeline connecting the landfill leachate collection system to District's sewer trunk line in accordance with the plans and specifications attached hereto as Exhibit A and incorporated hereby reference.

2. District shall not require City to pay a connection or capital improvement fee for connecting to the District's sewer system.

3. City shall pay for sewer treatment services in accordance with the District's fee schedule.

4. In connecting to the District's sewer trunk line and thereby discharging leachate into the sewer system as provided in this agreement, City shall comply with all applicable federal and state laws and all applicable rules and regulations of District.

5. District shall have the same remedies against City for any violation of District rules and regulations as it would have if any other customer violated said rules and regulations.

6. This document contains the entire agreement between the parties concerning its subject matter. Any and all existing statements or agreements, whether oral or written, or renewals thereof, between the parties hereto, covering the same subject matter, are hereby canceled and superseded by this agreement, and such prior statement or agreement shall have no further force or effect.

7. Whenever notice to a party is required or permitted by this Agreement, it shall be deemed given when deposited with proper address and postage in the U.S. Mail or when personally delivered as follows:

DISTRICT: Ukiah Valley Sanitation District
Ukiah Civic Center
300 Seminary Avenue
Ukiah, CA. 95482

With copy to:

H. Peter Klein
Mendocino County Counsel
County Administration Center
Bush Street
Ukiah, CA. 95483

FAX: 707-463-4592

City: City Manager
City of Ukiah
Ukiah Civic Center
300 Seminary Avenue
Ukiah, CA 95482

FAX: 707-463-6204

Notices may be telefaxed in which case the notice shall be deemed given when received.

Either party may change the address to which notice must be given under this Agreement by providing notice of the address change as provided in this paragraph.

8. This Agreement shall be governed by the laws of the State of California. Any legal action arising out of this Agreement must be filed in Mendocino County. The parties waive any objections they may otherwise have to jurisdiction or venue in Mendocino County.

9. This Agreement is for the sole and exclusive benefit of the parties who do not intend to create any rights in third parties or to create third party beneficiaries.

10. No waiver by either party of any of the provisions of this Agreement or failure of either party to object to a breach thereof shall constitute a waiver of any other provisions of this Agreement, or of the parties' right to enforce a subsequent breach of the same or a different provision of the Agreement. No waiver shall be deemed a continuing one or bind either party in any way, unless confirmed in a writing signed by the that party.

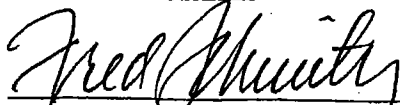
11. The signatories to this Agreement have been duly and properly authorized by the party they represent to sign this Agreement on its behalf and their signature on this Agreement is binding upon the party they represent.

12. This Agreement may be executed in one or more duplicate originals bearing the original signature of both parties and when so executed any such duplicate original shall be admissible as proof of the existence and terms of the Agreement between the parties.


This Agreement was executed and delivered as of the date first written above in Ukiah, Mendocino County, California.

CITY OF UKIAH

By:


Fred Schreiter, Mayor

ATTEST:


Marge Giuntoli, City Clerk

UKIAH VALLEY SANITATION
DISTRICT

By: Frank McMichael
 , Chairperson

ATTEST:

Kristen Van Pelt
District Clerk

EXHIBIT “H”

Amendment No. 1
to the
Participation Agreement between The City of Ukiah and
the Ukiah Valley Sanitation District

This Amendment No. 1 amends the Participation Agreement between the City of Ukiah and the Ukiah Valley Sanitation District dated July 19, 1995 to reflect the following changes:

Paragraph 1 shall read as follows:

The annual costs for treatment, including maintenance, operation, administration, repair and replacement, expansion, upgrading, debt service, insurance and financial services of the entire sewer system (treatment plant, trunk sewer and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation. Expense categories not included in a approved budget prior to the 1997/98 fiscal year must be authorized by a separate written agreement approved by both the CITY and DISTRICT, such an agreement shall be required if any expense (1) is a capital expenditure in excess of \$100,000, other than for repair or replacement of existing facilities or equipment, or (2) involves a charge that can be lawfully imposed in either the City or the unincorporated area but not in both the City and the unincorporated area. For the purpose of this agreement, one sewer unit is defined as being a single unit of sewer discharge having characteristics of flow, B.O.D. and suspended solids equivalent to that generated and discharged by a typical single family residential unit. CITY shall be the paying and receiving agent for all DISTRICT operation and maintenance funds. Cost apportionment between CITY and DISTRICT as described above shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY to DISTRICT equivalent sewer service units on record as of March 31 each year.

Paragraph 6 shall read as follows:

To carry out the purpose of this Agreement, the Board of Directors of the District and the City Council of the City of Ukiah shall meet together at such times and places as they shall agree, but in any event at least once a year, prior to the commencement of the fiscal year (July 1 - June 30) for, among other purposes, approval of the annual budget for the sewer system operations.

6.1 The CITY shall prepare the proposed budget for the sewer system which must receive approval from both the City Council and the Ukiah Valley Sanitation District Board of Directors.

6.2 If the City Council and the Board of Directors fail to agree on any item or items in the proposed budget, they shall appoint a committee consisting of one representative from each body to review the disputed items and make a recommendation for approval by both bodies. If the City Council and Ukiah Valley Sanitation District Board fail to reach agreement on one or more of the disputed items

within a period of sixty days (60) from the date of the their joint meeting ("disputed budget item(s)"), the dispute shall be resolved as provided in subsection 6.3.

6.3 Disputed budget item(s) shall be resolved as follows:

6.3.1 The disputed item(s) shall be excluded from the budget or included under conditions acceptable to both parties until the dispute is resolved as provided herein.

6.3.2 Either the City Council or the Ukiah Valley Sanitation District Board of Directors may request resolution as provided in this subparagraph 6.3, if the parties have failed to reach agreement on a disputed budget item as provided in subparagraph 6.2, by providing the other party with a Notice of Dispute Resolution. Said Notice shall identify the Disputed Budget Item or Items which is to be submitted for resolution, the proposed remedy of the dispute, and the name, address, and phone number of the party's nominee to the Disputed Resolution Hearing Panel.

6.3.3 Within ten (10) days of receiving notice initiating dispute resolution, the party receiving notice shall submit the name, address, and phone number of its nominee of the Hearing Panel to the other party. Within ten (10) days thereafter, the two nominees shall meet and/or consult and select a third panel member, which shall complete the formation of the Hearing Panel. Each party and its nominee shall endeavor to appoint members of the Panel who have expertise in the subject matter of the dispute. Within ten (10) days of the Notice of Dispute Resolution, the parties may agree to a single arbitrator as a less costly alternative to the Hearing Panel. All references to the Hearing Panel shall include a single arbitrator, if the parties so agree.

6.3.4 The Hearing Panel shall establish such rules of procedure as it deems necessary to resolve the dispute provided that such rules must provide for a hearing at which each party may be represented by legal counsel and at which each party is entitled to present written and oral evidence and legal argument in support of its position. The Panel must hold the hearing and issue its written decision within forty-five (45) days from the date the third panel member is selected and agrees in writing to serve on the Panel. The decision of the Hearing Panel shall be reported to the parties who, within thirty (30) days of the date notice of the decision is given, must each meet and vote to accept or reject the decision.

6.3.5 Each party must act in good faith in considering the decision and should accept the decision unless the decision is contrary to law, clearly erroneous or in direct conflict with written ordinances or policies adopted by the party before the dispute arose. The decision shall be deemed approved by a party; unless within thirty (30) days of the date notice of the decision is given to a party, that party notifies the other party that it has rejected the decision. If either party rejects the

Hearing Panel's decision, the disputed budget item shall be deemed disapproved and excluded from the budget. If the Hearing Panel recommends approval of a disputed budget item on conditions acceptable to the CITY and the DISTRICT rejects the decision, the CITY shall have the right to terminate this agreement by giving the DISTRICT one hundred eighty (180) days prior written notice of said termination; provided it provides that notice within sixty (60) days of the date the DISTRICT gives notice that it rejected the decision of the Hearing Panel.

This Amendment No.1 is made this 24th day of March, 1999, and the parties hereto have set their signatures below.

CITY OF UKIAH

By 

Jim Maston, Mayor

UKIAH VALLEY SANITATION DISTRICT

By 

Michael Delbar, Chairperson

ATTEST:


CITY CLERK


CLERK OF THE BOARD

EXHIBIT “I”

AMENDMENT NO. 2
TO
PARTICIPATION AGREEMENT
BETWEEN
CITY OF UKIAH
AND
UKIAH VALLEY SANITATION DISTRICT

This Agreement is entered on Dec. 15, 2004 ("Effective Date"), in Ukiah, California, between the City of Ukiah ("City"), a general law municipal corporation, and the Ukiah Valley Sanitation District ("District"), a special district. The City and the District may be referred to herein as a "Party," or collectively as "the Parties."

RECITALS:

1. The Parties entered a Participation Agreement on July 19, 1995, under which (1) they share the cost and use of a waste water treatment plant owned and operated by the City, and (2) the City operates and maintains the sewer mains, laterals and related facilities owned by the District.

2. On July 19, 1995, the Parties entered an Amendment No. 1 to the Participation Agreement. That agreement affirms that the annual costs for the entire sewer system (treatment plant, trunk sewer and collection system of the City and the District), including maintenance, operation, administration, repair and replacement, upgrading, debt service, insurance and financial services are allocated between the City and the District based upon the ratio of City and District sewer service units for each year of operation. "Sewer service unit" is defined in the Participation Agreement and is referred to herein as "Sewer service unit" or "ESSU."

3. Amendment No. 1 also requires a separate written agreement between the City and the District for expense categories not included in an approved budget for the sewer system prior to the 1997/1998 fiscal year, if the expense is a capital expense in excess of \$100,000 other than a repair or replacement of existing facilities or equipment.

4. The wastewater treatment plant is at or near its capacity to treat and discharge treated wastewater in compliance with its Waste Discharge/NPDES Permit from the North Coast Regional Water Quality Control Board ("NCRWQCB").

5. Using pre-treatment methods recommended by Brown and Caldwell, Environmental Engineers and Consultants, on an interim basis only, the City has increased the treatment capacity

of its sewage treatment plant by a total of 1388 Equivalent Sewer Service Units ("ESSUs"), assuming that availability of these ESSUs is not affected by any orders or determinations by the NCWRQCB or any other administrative or judicial body with jurisdiction over the City's sewer discharges.

6. In addition to expanding its treatment capacity, many of the structures and treatment processes within the treatment plant have exceeded their useful design life and need to be replaced or rehabilitated.

7. The City has obtained a preliminary design from Brown and Caldwell for two related projects: (1) a project to increase the capacity of the wastewater treatment plant to permit additional new connections in both the District and the City ("the Capacity Project"); and (2) a project to rehabilitate and upgrade the wastewater treatment plant ("the Upgrade/Rehabilitation Project"), collectively, "the Project." The engineer's cost estimates for the projects are approximately \$21,000,000 for the Capacity Project and \$42,000,000 for the Upgrade/Rehabilitation Project, for a combined Project cost of \$63,000,000. The City currently estimates that both projects will be completed in 2008. Many factors could affect the estimated completion date, and the Parties acknowledge that this is an estimate only.

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

9. Allocating the costs of the Capacity Project and the upgrade portion of the Upgrade/Rehabilitation Project requires a separate written agreement under Amendment No. 1, because those portions of the projects will involve expense categories not included in an approved budget for the sewer system prior to the 1997/1998 fiscal year, which are capital expenses in excess of \$100,000 other than a repair or replacement of existing facilities or equipment. Accordingly, the Parties require this Amendment No. 2 to allocate the available ESSU's and to share the cost of the Project.

AGREEMENT:

NOW, THEREFORE, in consideration of the above-recited facts and the terms and conditions as stated below, the Parties agree as follows:

1. Allocation of ESSU's Prior to Completion of Project and of Increased Capacity after Project Completion.

1.1 ESSU's During Interim Period. The ESSU's made available through the use of the pre-treatment process recommended by Brown and Caldwell shall be allocated as follows: 938 to the District; 442 to the City. If either party uses its remaining connections before the other party, it may give the other party written notice that it requests negotiations to share the other party's remaining connections. Not later than fifteen (15) days after such notice has been given, the

Parties shall meet and negotiate the sharing of the remaining connections. The Parties are not required to agree to share the remaining connections, but each party shall carefully consider the interests and concerns of the other party and make a good faith effort to accommodate them, while still protecting its own governmental interests.

1.2 The Increased Capacity. The Increased Capacity shall be allocated as follows: 65% to the District; 35% to the City. This allocation of Increased Capacity shall be subject to the same review and opportunity for adjustment as is provided for the allocation of Capacity Project costs under Section 2.1 of this Agreement.

2. Allocation of the Project Costs. All of the costs of the Project ("Project Costs"), including, but not limited to, planning, engineering, design, design review, administration, construction, legal and financing (including fees, financial services, transaction costs and debt service) shall be allocated between the City and the District as follows:

2.1. The Capacity Project. 35% of the Project Costs of the Capacity Project shall be paid by the City and 65% of those Project Costs shall be paid by the District. This allocation of Capacity Project Costs is based on an estimate of the number of new Sewer service units that will be needed in the City and in the District through the year 2020. The allocation of these costs shall be reviewed annually by the Parties to insure that the cost sharing reflects the actual proportion of new connections in the City and the District. Each year, commencing twelve months after the completion of the Project, the Parties shall meet to conduct this review, taking into account the number of new service connections within each party during the previous twelve months, the total number of new connections within each party's jurisdiction since the Effective Date, the likely number of new connections in the next one, three and five year time periods, any changes in organization, including annexations or detachments, which may have occurred, and any other facts or conditions the Parties consider relevant. Based upon this review, the Parties may adjust the allocation of these costs between them.

2.2. The Upgrade/Rehabilitation Project. The Project Costs of the Upgrade/Rehabilitation Project shall be allocated between the City and the District based upon the ratio of City and District ESSUs for each year of operation, commencing in the year when Project Costs are first incurred, as provided in the Participation Agreement. Consistent with the Participation Agreement, these allocations shall be calculated each year at the same time and in the same manner as other costs allocated under Section 1 of the Participation Agreement.

2.3. Rate Setting to Recover Costs. Each party agrees to establish rates (connection fees and sewer service fees) which are sufficient to pay its share of Project Costs as apportioned pursuant to this Agreement.

3. Compliance with waste discharge/NPDES requirements. Each party in its management of its sewer system agrees to comply with the Waste Discharge/NPDES permits issued to the City for the operation of the waste water treatment plant and sewer system and with applicable provisions of state and federal law, which regulate discharges to the waters of the State

of California and the United States, including the Porter Cologne Water Quality Act and the Clean Water Act; provided, however, that the legal and other costs of defending a citizen suit or other enforcement action and any settlement or judgment shall be an expense of the entire sewer system, subject to apportionment under the Participation Agreement. Such costs shall not be apportioned and shall be allocated to one Party, if the other Party gives that Party written notice of actions it must take to avoid such a violation and that Party fails to take such action within the time provided in the notice.

4. Notice. Whenever written notice is required or permitted by this Agreement, the Participation Agreement, Amendment No. 1, or any future amendments to the Participation Agreement, it shall be deemed given when actually received, if delivered by personal delivery, fax, registered or certified mail or overnight courier, or 48 hours after deposit in the United States Mail with proper first class postage affixed thereto, when addressed or sent as follows:

CITY OF UKIAH

Attention: City Manager
Ukiah Civic Center
300 Seminary Avenue
Ukiah, CA. 95482

FAX: 463-6204

UKIAH VALLEY SANITATION
DISTRICT

Attention: Chairman
County of Mendocino
County Administration Center
501 Low Gap Road
Ukiah, CA. 95482

FAX: 463-4245

5. Effect on Participation Agreement. This Amendment No. 2 constitutes a second amendment to the Participation Agreement, and is not intended to alter the terms of the Participation Agreement and Addendum No. 1, except as expressly provided herein. Collectively, the Participation Agreement, Amendment No. 1 and this Amendment No. 2 ("the Agreements") contain the entire agreement between the City and the District concerning the wastewater treatment plant and the City's operation of the sewer systems in the City and the District. Together, these agreements supercede and replace any other statements, agreements, or understandings between the Parties concerning this subject matter. The Participation Agreement, including Amendment No. 1 and this Amendment No. 2 may be modified only by a written agreement approved by the governing bodies of the Parties and executed by an authorized officer of each Party.

6. Duplicate Originals. Two or more copies of this Amendment No. 2 may be executed by the Parties. Each such copy, bearing the original signatures of the Parties, shall be considered an original agreement, admissible in any administrative or judicial proceedings as evidence of the agreement between the Parties.

7. No Third Party Beneficiaries. Unless otherwise agreed in bond indentures or other agreements or documents prepared in connection with financing the Project, which documents have been approved by the governing bodies of the Parties and signed by authorized

representatives of the Parties, the Parties intend this agreement for the sole benefit of the Parties, and do not intend to confer any rights under the Agreements or any right to enforce the Agreements on any person or entity who is not a Party.

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

CITY OF UKIAH

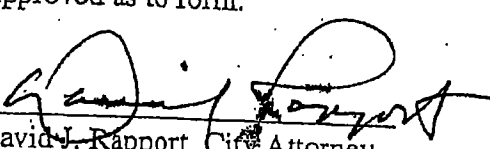
By 

Candace Horsley, City Manager

ATTEST:


Marie Ulvila, City Clerk

Approved as to form:

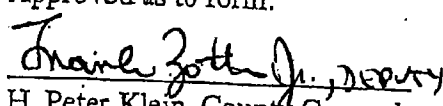

David J. Rapport, City Attorney

UKIAH VALLEY SANITATION DISTRICT

By 

MICHAEL DELBAR, Chairman

Approved as to form:


H. Peter Klein, County Counsel

ATTEST:

Kristi Furman, Clerk of the Board
Mendocino County Board of Supervisors

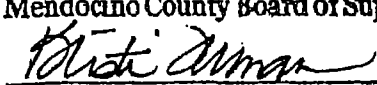


EXHIBIT “J”

INSTALLMENT SALE AGREEMENT

Dated as of March 1, 2006

between the

ASSOCIATION OF BAY AREA GOVERNMENTS,
as Seller

CITY OF UKIAH,
as Purchaser

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Trustee

Relating to

\$75,060,000
Association of Bay Area Governments
2006 Water and Wastewater Revenue Bonds,
Series A

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INSTALLMENT SALE AGREEMENT

This INSTALLMENT SALE AGREEMENT (this "Agreement"), dated as of March 1, 2006, is between the ASSOCIATION OF BAY AREA GOVERNMENTS, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), as seller, the CITY OF UKIAH, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), as purchaser, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

BACKGROUND:

1. The City presently owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the "Wastewater System"), and the City wishes to provide funds at this time to finance improvements to the Wastewater System consisting generally of the rehabilitation, upgrade and expansion of the existing treatment plant (the "Project").

2. The Authority has the power to assist the City in the financing of facilities and property useful to the City, and the Authority has proposed to enter into this Agreement with the City under which the Authority has agreed to provide funding for the Project and sell the completed Project to the City in consideration of the agreement by the City to pay the purchase price of the Project in semiannual installments (the "Installment Payments").

3. For the purpose of obtaining the moneys required to finance the Project in accordance with the terms hereof, the Authority has assigned and transferred certain of its rights under this Agreement to the Trustee under an Indenture of Trust dated as of March 1, 2006, between the Authority and the Trustee, under which the Authority has authorized the issuance of its 2006 Water and Wastewater Revenue Bonds, Series A in the aggregate principal amount of \$75,060,000 (the "Bonds") which are secured by a pledge of certain revenues including the Installment Payments.

4. The City has determined to secure the Installment Payments with a pledge of and lien on the Net Revenues from the Wastewater System, on a parity with the pledge and lien which secures the loan obligations of the City under Contract No. N-808-550-0 dated August 15, 1994, between the City and the State of California, acting by and through the State Water Resources Control Board.

5. The payment of principal of and interest on the Bonds is insured by a municipal bond insurance policy issued by XL Capital Assurance Inc. (the "Bond Insurer"), and the Bond Insurer will issue its debt service reserve insurance policy for the account of the reserve fund which is established hereunder.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City, the Trustee and the Authority formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS ; RULES OF INTERPRETATION

SECTION 1.1. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given them in Appendix A to the Indenture. In addition, when used in this Agreement the following terms have the following defined meanings:

"Additional Revenues" means, with respect to the issuance of any Parity Debt, any or all of the following amounts:

- (i) An allowance for Net Revenues from any additions or improvements to or extensions of the Wastewater System to be made by the City following the issuance of such Parity Debt, in an amount equal to 90% of the estimated additional average annual Net Revenues to be derived in the first full year of operation of such additions, improvements and extensions, all as shown by the certificate or opinion of a Fiscal Consultant.
- (ii) An allowance for Net Revenues arising from any increase in the rates and charges made for service from the Wastewater System which have been adopted prior to the incurring of such Parity Debt but which, during all or any part of the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City under Section 5.8(b), was not in effect, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year or 12 month period, all as shown by the certificate or opinion of a Fiscal Consultant.

"City Representative" means the Mayor, the City Manager or the Finance Director of the City, or any other person authorized by resolution of the City Council of the City to act on behalf of the City under or with respect to this Agreement.

"District" means the Ukiah Valley Sanitation District, a county sanitation district duly organized and existing under the Sanitation District Act of the State of California.

"Event of Default" means an event of default hereunder, as described in Section 6.1.

"Financing Agreement" means the Financing Agreement between the City and the District dated March 1, 2006, including any amendments thereto or modifications thereof.

"Fiscal Consultant" means any consultant or firm of such consultants appointed by the City and who, or each of whom: (a) is judged by the City to have experience in matters relating to the financing of Wastewater System enterprises; (b) is in fact independent and not under domination of the City; (c) does not have any substantial interest, direct or indirect, with the City other than as purchaser of the Bonds or any Parity Debt; and (d) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make reports to the City.

"Fiscal Year" means the twelve-month period beginning on July 1 of any year and ending on June 30 of the next succeeding year, or any other twelve-month period selected by the City as its fiscal year.

"Gross Revenues" means all gross charges (including surcharges, if any) received for, and all other gross income and receipts derived by the City from, the ownership and operation of the Wastewater System or otherwise arising from the Wastewater System, including but not limited to:

- (a) all amounts levied by the City as a fee for connecting to the Wastewater System, as such fee is established from time to time under the laws of the State of California;
- (b) all income, rents, rates, fees, capital improvement fees (including facilities capacity and pump zone fees), charges or other moneys derived from the services, facilities and commodities sold (including recycled water), furnished or supplied through the facilities of the Wastewater System;
- (d) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or under applicable law to the Wastewater System;
- (e) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Wastewater System as permitted in this Agreement; and
- (f) amounts collected by the City under the Financing Agreement.

The term "Gross Revenues" does not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City, and (ii) the proceeds of any special assessments or special taxes levied upon real property within any improvement City for the purpose of paying special assessment bonds or special tax obligations of the City relating to the Wastewater System.

"Installment Payment" means all payments required to be paid by the City on any date under Section 4.4(a), including any amounts payable upon delinquent installments and including any prepayment thereof under Section 7.2.

"Installment Payment Date" means, with respect to any Interest Payment Date, the 5th Business Day preceding such Interest Payment Date.

"Installment Payment Fund" means the fund which is established and held by the Trustee under Section 4.4(b).

"Maximum Annual Debt Service" means, as of the date of any calculation, the maximum sum obtained for the current or any future Fiscal Year:

- (a) the aggregate amount of the Installment Payments coming due and payable in such Fiscal Year hereunder, except to the extent payable from any security deposit under Section 7.1;
- (b) the principal amount of all outstanding Parity Debt, if any, coming due and payable by their terms in such Fiscal Year, provided that if any such issue of Parity Debt has principal coming due and payable solely at maturity, such principal shall be deemed to be amortized over the full term of such Parity Debt in a manner that results in approximately equal annual installments of principal and interest in each Fiscal Year; and
- (c) the amount of interest which would be due during such Fiscal Year on the aggregate principal amount of all outstanding Parity Debt, if any, which would be outstanding in such Fiscal Year if such Parity Debt are retired as scheduled; *provided, however*, that with respect to any Parity Debt which bear interest at an adjustable rate, such interest shall be calculated at an assumed rate equal to the average rate of interest per annum for each of the five previous whole calendar years as shown by the J. J. Kenny Index (or, in the event and to the extent such index is not maintained for all or any portion of such period, any similar index of variable rate interest for tax-exempt obligations as may be selected by the City in its sole discretion).

"Net Revenues" means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

"Operation and Maintenance Costs" means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the Wastewater System, determined in accordance with generally accepted accounting principles, including but not limited to (a) all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and (b) all administrative costs of the City that are charged directly or apportioned to the operation of the Wastewater System, such as salaries and wages of employees, overhead, taxes (if any) and insurance. "Operating and Maintenance Costs" do not include (i) administrative costs of the Certificates which the City is required to pay hereunder, (ii) payments of debt service on bonds, notes or other obligations issued by the City with respect to the Wastewater System, (iii) depreciation, replacement and obsolescence charges or reserves therefor, and (iv) amortization of intangibles or other bookkeeping entries of a similar nature.

"Overdue Rate" means the highest rate of interest represented by any of the Outstanding Bonds.

"Parity Debt Documents" means, collectively, (a) the contract authorizing the Prior State Loan, and (b) the indenture of trust, trust agreement or other document authorizing the issuance of any other Parity Debt or any securities which evidence other Parity Debt.

"Parity Debt" means (a) the Prior State Loan, and (b) any bonds, notes, leases, installment sale agreements or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued under and in accordance with Section 5.8.

"Participation Agreement" means the Participation Agreement between the City and the District dated July 19, 1995, as amended by Amendment No. 1 and Amendment No. 2, thereto, including any further amendments thereto or modifications thereof.

"Prior State Loan" means the loan obligations of the City under Contract No. 4-808-550-0 dated August 15, 1994, between the City and the State of California, acting by and through the State Water Resources Control Board, in the aggregate original principal amount of \$6,592,944.

"Project" means the facilities, improvements and other property described more fully in Appendix B attached hereto, as that Appendix may be amended from time to time.

"Project Costs" means, with respect to the Project, all costs of the acquisition, construction and installation thereof which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Project;
- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;
- (d) all costs of engineering, architectural, legal, environmental, design and other consulting services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;
- (e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done

which are properly chargeable to the acquisition, construction of the Project.

- (f) all financing costs incurred in connection with the acquisition, construction and installation of the Project; and
- (g) the interest components of the Installment Payments during the period of acquisition, construction and installation of the Project.

"Project Fund" means the fund by that name established and held by the Trustee under Section 3.6.

"Qualified Reserve Fund Credit Instrument" means the Municipal Bond Debt Service Reserve Insurance Policy issued by the Bond Insurer and deposited with the Trustee on the Closing Date for the credit of the Reserve Fund under Section 4.7.

"Rate Stabilization Fund" means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the Wastewater System, which fund is established, held and maintained in accordance with Section 4.6.

"Reserve Fund" means the fund by that name established and held by the Trustee under Section 4.7.

"Reserve Requirement" means, as of the date of calculation, an amount equal to the maximum amount of Installment Payments payable by the City in the current or any future Fiscal Year. As of the Closing Date, the Reserve Requirement is equal to \$4,915,575.00.

"Wastewater Fund" means the fund or funds established and held by the City with respect to the Wastewater System for the receipt and deposit of Gross Revenues.

"Wastewater System" means the entire system of the City for the collection, treatment and disposal of wastewater within the service area of the City, including but not limited to all facilities, properties, lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City. The term "Wastewater System" also includes those facilities of the Ukiah Valley Sanitation District which are operated and maintained by the City under the Participation Agreement.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. *Representations, Covenants and Warranties of the City.* The City represents, covenants and warrants to the Authority and the Bond Insurer as follows:

- (a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State, has full legal right, power and authority under said laws to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the City executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the

City, including but not limited to the performance of the City's obligations under this Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. To the best knowledge of the undersigned representatives of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.
- (g) Prior Indebtedness. The City has not issued or incurred any obligations which are currently outstanding having any priority in payment out of the Gross Revenues or the Net Revenues over the payment of the Installment Payments as provided herein, other than the Prior State Loan.

SECTION 2.2. *Representations, Covenants and Warranties of Authority.* The Authority represents, covenants and warrants to the City and the Bond Insurer as follows:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State, and has power to enter into this Agreement and to perform the duties and obligations imposed on it hereunder and thereunder. The Executive Board of the Authority has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the Authority executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement have been duly authorized, executed and delivered by the Authority and

constitute the legal, valid and binding agreements of the Authority with the Authority, enforceable against the Authority in accordance with their respective terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.1. *The Bonds.* The Authority shall issue the Bonds under the Indenture in the aggregate principal amount of \$75,060,000. The City hereby approves the Indenture, the assignment thereunder to the Trustee of certain rights of the Authority, and the issuance of the Bonds.

SECTION 3.2. *Deposit and Application of Funds.* On the Closing Date, the Trustee shall deposit a portion of the proceeds of sale of the Bonds in the amount of \$74,200,000 into the Project Fund, to be applied to finance the acquisition, construction and improvement of the Project as provided in this Agreement.

SECTION 3.3. *Acquisition and Construction of the Project.* The City, as agent of the Authority under Section 3.4, hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided for, the acquisition, construction and installation of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law. All contracts for, and all work relating to, the acquisition, construction and installation of the Project are subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The failure to complete the Project by the estimated completion date thereof does not constitute an Event of Default hereunder or a grounds for termination hereof, nor will such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments when due. The Authority has no responsibility, and shall incur no liability or obligations, for the performance by the City of its obligations under this Section 3.3.

SECTION 3.4. *Appointment of City as Agent.* The Authority hereby appoints the City as its agent to carry out all phases of the acquisition, construction and installation of the Project under and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the acquisition, construction and installation of the Project. As agent of the Authority hereunder, the City will enter into, administer and enforce all purchase orders or other contracts relating to the Project.

SECTION 3.5. *Plans and Specifications.* The City has the right to specify the exact scope, nature and identification of the Project and the respective components thereof. Before any payment is made for the Project or any component thereof from amounts on deposit in the Project Fund, the City must prepare detailed plans and specifications relating thereto. The City may from time to time amend any such plans

and specifications, and thereby change or modify the description of the Project or any component thereof.

SECTION 3.6. *Project Fund.* The Trustee shall establish and maintain a separate fund (the "Project Fund") from which the City shall make disbursements from time to time to pay Project Costs (or to reimburse the City for payment of Project Costs). The Trustee shall maintain accurate records showing all disbursements from the Project Fund, including the amount of each disbursement, the amount to whom each disbursement is made and the purpose for which funds are disbursed. The Trustee shall disburse amounts in the Project Fund from time to time upon the receipt of written requisitions of the City in substantially the form attached hereto as Appendix C. Amounts on deposit in the Project Fund shall be invested by the Trustee at the written direction of the City in accordance with Section 8.1.

Upon the filing by the City of a written certificate of a City Representative under Section 3.7 stating that the Project has been substantially completed, the Trustee will withdraw all amounts remaining on deposit in the Project Fund and transfer such amounts to the Installment Payment Fund. If and to the extent so directed in writing by a City Representative, the Trustee shall apply all or a portion of the amounts so transferred from the Project Fund to the Installment Payment Fund to the prepayment of Installment Payments under Section 7.2.

SECTION 3.7. *Certificate of Project Completion.* Upon the completion of the Project, but in any event not later than 30 days following such completion, the City Representative must execute and deliver to the Authority, the Bond Insurer and the Trustee a written certificate of the City Representative which (a) states that the construction of the Project has been substantially completed, (b) identifies the total Project Costs thereof, and (c) identifies the amounts, if any, to be reserved in the Project Fund for payment of future Project Costs.

ARTICLE IV

SALE OF PROJECT; INSTALLMENT PAYMENTS

SECTION 4.1. *Sale.* The Authority hereby sells the Project to the City and the City hereby purchases the Project from the Authority, upon the terms and conditions set forth in this Agreement.

SECTION 4.2. *Term.* The Term of this Agreement commences on the Closing Date, and ends on February 1, 2036, or such later or earlier date on which all of the Installment Payments, Additional Payments and other amounts due hereunder have been paid or prepaid. Notwithstanding the foregoing provisions of this Section 4.2, the Term of this Agreement will not end so long as any amounts are owed to the Bond Insurer with respect to the Bond Insurance Policy.

SECTION 4.3. *Title.* Title to the Project, and each component thereof, will be deemed conveyed by the Authority to and vested in the City upon the completion of the acquisition, construction and installation thereof. The Authority and the City will execute,

deliver and cause to be recorded any and all documents reasonably required by the City to consummate such transfer of title.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay. The City hereby agrees to pay to the Authority, as the purchase price of the Project hereunder, the aggregate principal amount of \$75,060,000 together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual Installment Payments in the respective amounts and on the respective Installment Payment Dates specified in Appendix A. The Installment Payments shall be secured by and payable solely from the sources specified in Section 4.5.

Notwithstanding anything herein or in the Indenture to the contrary, amounts paid by the Bond Insurer under the Bond Insurance Policy do not relieve the City from its obligations hereunder to pay the Installment Payments when due.

(b) Installment Payment Fund. The Trustee shall establish and maintain a separate fund to be known as the "City of Ukiah 2006 Installment Payment Fund". On each Installment Payment Date, the City shall deposit with the Trustee an amount which, together with amounts then held by the Trustee in the Installment Payment Fund, is equal to the full amount of such Installment Payment coming due and payable on such Installment Payment Date. On each Installment Payment Date, the Trustee shall withdraw the full amount of the Installment Payment coming due and payable on such Installment Payment Date and transfer such amount to the Revenue Fund which is established and held by the Trustee under the Indenture.

(c) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments under this Section 4.4; *provided, however*, that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2 or Section 7.3, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the Bonds which are thereby redeemed under the applicable provisions of Section 4.01 of the Indenture.

(d) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until fully paid, and the City shall pay the same with interest thereon, from the date of default to the date of payment, at the Overdue Rate.

(e) Assignment. The City understands and agrees that certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Indenture, for the benefit of the Bond Insurer and the Owners of the Bonds, and the City hereby consents to such assignment.

SECTION 4.5. *Pledge and Application of Net Revenues.*

(a) Pledge. All of the Net Revenues and all moneys on deposit in any of the funds and accounts established and held by the Trustee under the Indenture are hereby irrevocably pledged to the punctual payment of the Installment Payments. Such pledge constitutes a security interest in and lien on the Net Revenues and such other moneys for the payment of the Installment Payments in accordance with the terms hereof, on a parity with the pledge and lien which secures the Parity Debt.

(b) Deposit of Net Revenues Into Wastewater Fund; Transfers to Make Payments. The City has heretofore established the Wastewater Fund, which the City agrees to continue to hold and maintain for the purposes and uses set forth herein. The City will deposit all of the Gross Revenues in the Wastewater Fund immediately upon receipt, and will apply the amounts in the Wastewater Fund as set forth in this Agreement and in any Parity Debt Documents. In addition to the transfers required to be made under any Parity Debt Documents, the City will apply amounts on deposit in the Wastewater Fund to pay when due the following amounts in the following order of priority:

- (i) all Operation and Maintenance Costs;
- (ii) the Installment Payments, except to the extent payable from amounts transferred from the Capitalized Interest Fund to the Revenue Fund under the Indenture;
- (iii) to the Trustee the amount of any deficiency in the Reserve Fund and in any reserve fund established for any Parity Debt, the notice of which deficiency has been to the City;
- (iv) any other payments required to comply with the provisions of this Agreement and any Parity Debt Documents; and
- (v) any other purposes authorized under subsection (d) of this Section.

(c) No Preference or Priority. Payment of the Installment Payments and the principal of and interest on the Parity Debt shall be made without preference or priority between the Installment Payments and such Parity Debt. If the amount of Net Revenues on deposit in the Wastewater Fund are any time insufficient to enable the City to pay when due the Installment Payments and the principal of and interest on any Parity Debt, such payments shall be made on a pro rata basis.

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

(e) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City will adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the Net Revenues. If any Installment Payment requires the adoption by the City of any supplemental budget or appropriation, the City will promptly adopt the same. The covenants on the part of the City contained in this subsection (e) are duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (e).

SECTION 4.6. *Rate Stabilization Fund.* The City has the right at any time to establish a fund to be held by it and administered in accordance with this Section 4.6, for the purpose of stabilizing the rates and charges imposed by the City with respect to the Wastewater System. From time to time the City may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, including but not limited to Net Revenues which are released from the pledge and lien which secures the Installment Payments and any Parity Debt, as the City may determine.

The City may, but is not be required to, withdraw from any amounts on deposit in the Rate Stabilization Fund and deposit such amounts in the Wastewater Fund in any Fiscal Year for the purpose of paying the Installment Payments or the principal of and interest on any Parity Debt coming due and payable in such Fiscal Year. Amounts so transferred from the Rate Stabilization Fund to the Wastewater Fund in any Fiscal Year will constitute Gross Revenues for such Fiscal Year (except as otherwise provided herein), and will be applied for the purposes of the Wastewater Fund. Amounts on deposit in the Rate Stabilization Fund are not pledged to and do not secure the Installment Payments or any Parity Debt. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the City, be applied for any other lawful purposes. The City may any time to withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the City.

SECTION 4.7. *Reserve Fund.* The Trustee shall establish and maintain a special fund designated as the "City of Ukiah 2006 Reserve Fund" to be held by the Trustee in trust for the benefit of the City and the Owners of the Bonds. Amounts in the Reserve Fund will be held in trust as a reserve for the payment when due of the Installment Payments on behalf of the City. Semiannually on or prior to each Installment Payment Date, the Trustee shall transfer any moneys in the Reserve Fund in excess of the Reserve Requirement to the Installment Payment Fund to be credited towards the Installment Payment coming due and payable on such Installment Payment Date. If on any Installment Payment Date the moneys available in the Installment Payment Fund are not at least equal to the amount of the Installment Payment then coming due and payable, the Trustee shall apply the moneys available in the Reserve Fund to make such payments on behalf of the City by transferring the amount necessary for this purpose to the Installment Payment Fund. Upon the termination of this Agreement and so long as all Installment Payments and other amounts due hereunder have been paid in full, the Trustee shall withdraw all amounts in the Reserve Fund and, at the written request of the City, pay those amounts to the City. Amounts on deposit in the Reserve Fund shall be invested by the Trustee at the written direction of the City in accordance with Section 8.1.

On the Closing Date, the Trustee shall take delivery of the Qualified Reserve Fund Credit Instrument and shall credit it to the account of the Reserve Fund. The Trustee shall draw amounts under the Qualified Reserve Fund Credit Instrument in accordance with the terms thereof for the purpose of making transfers to the Installment Payment Fund as required by the preceding paragraph. On the Closing Date, the City shall execute a Financial Guaranty Agreement with the Bond Insurer for the purpose of securing the obligations of the City in respect of the Qualified Reserve Fund Credit Instrument. Upon the expiration of the Qualified Reserve Fund Credit Instrument, the City will either (a) replace such Qualified Reserve Fund Credit Instrument with a new Qualified Reserve Fund Credit Instrument, or (b) deposit with the Trustee an amount of funds equal to the Reserve Requirement, to be derived from any source of legally available funds of the City.

SECTION 4.8. *Additional Payments.* In addition to the Installment Payments, the City shall pay when due the following amounts to the following parties:

- (a) to the Authority, all costs and expenses incurred by the Authority to third parties which are required to comply with the provisions of this Agreement and the Indenture, to the extent the Authority determines that such costs and expenses are allocable to the City;
- (b) to the Authority, an annual administrative fee equal to .01% of the outstanding principal balance of the Installment Payments, in an amount not to exceed \$1,000, which fee shall be calculated and billed in advance to the City by the Trustee not later than February 15 in each year based on the outstanding principal balance of the Installment Payments as of the previous February 2, such amount to be billed without the need for an invoice or other statement from the Authority; and
- (c) to the Trustee upon request therefor, all of its reasonable costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents.

The Additional Payments are payable from, but are not secured by a pledge or lien upon, the Net Revenues. The rights of the Trustee and the Authority under this Section 4.8, and the obligations of the City under this Section 4.8, survive the termination of this Agreement.

SECTION 4.9. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder is a special obligation of the City limited solely to the Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts. No other funds or property of the City are liable for the payment of the Installment Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments from the Net Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off,

counterclaim or recoupment arising out of any breach by the Authority or the Trustee of any obligation to the City or otherwise with respect to the Wastewater System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Wastewater System, failure to complete the acquisition and construction of the Project by the estimated completion date thereof, default by the District in any of its obligations under the Participation Agreement or the Financing Agreement, sale of the Wastewater System, the taking by eminent domain of title to or temporary use of any component of the Wastewater System, commercial frustration of purpose, any change in the tax law or other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. *Disclaimer of Warranties.* The Trustee and the Authority make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Project or any component thereof, or any other representation or warranty with respect to any of the Project or any component thereof. The Trustee and the Authority are not liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Indenture for the existence, furnishing, functioning or use of the Project.

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and the Bond Insurer, and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on or about the Wastewater System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Indenture, (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Wastewater System, and (d) any act or omission of any lessee of the City with respect to the Wastewater System. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or gross negligence under this Agreement by the Authority, the Trustee or the Bond Insurer, or their respective members, officers, agents, employees, successors or assigns. The provisions of this Section 5.2 survive the expiration of the Term of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of Wastewater System.* Except as provided herein, the City covenants that the Wastewater System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement or any Parity Debt Documents. The City may not enter into any agreement which impairs the operation of the Wastewater System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Bond Owners or the Trustee with respect to the Net Revenues. If any substantial part of the Wastewater System is sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements and extensions or replacement facilities or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date under Section 7.2, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

Any amounts received as awards as a result of the taking of all or any part of the Wastewater System by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the City, shall either (a) be used for the acquisition or construction of improvements and extension of the Wastewater System, or (b) be applied on a pro rata basis to (i) prepay the Installment Payments on the next available prepayment date under Section 7.2, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

SECTION 5.4. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the Wastewater System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the Wastewater System. All amounts collected from insurance against accident to or destruction of any portion of the Wastewater System shall be used, at the option of the City, either (a) to repair or rebuild such damaged or destroyed portion of the Wastewater System, or (b) to prepay on a pro rata basis (i) the Installment Payments on the next available prepayment date under Section 7.2, and (ii) prepay any Parity Debt in accordance with the related Parity Debt Documents.

The City will maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the interests of the City, the Authority, the Trustee and the Owners of the Bonds.

Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

SECTION 5.5. *Records and Accounts.* The City will keep proper books of record and accounts of the Wastewater System in which complete and correct entries shall be made of all transactions relating to the Wastewater System. Said books shall, upon prior request, be subject to the reasonable inspection of the Bond Insurer and the Owners of not less than 10% of the Outstanding Bonds, or their representatives authorized in writing, upon not less than 2 Business Days' prior notice to the City.

The City will cause the books and accounts of the Wastewater System to be audited annually by an Independent Accountant not more than 9 months after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Insurer and the Bond Owners at the office of the City. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. *Rates and Charges.*

(a) Gross Revenue Covenant. The City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues (excluding amounts derived from the Rate Stabilization Fund) sufficient to pay the following amounts in the following order of priority:

- (i) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;
- (ii) All Installment Payments and principal of and interest on Parity Debt coming due and payable during such Fiscal Year, except to the extent payable from capitalized interest, without preference or priority;
- (iii) All amounts, if any, required to restore the balance in the Reserve Fund to the full amount of the Reserve Requirement; and
- (iv) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

(b) Net Revenue Covenant. In addition, the City will fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to 120% of the amount described in the preceding clause (a)(ii) coming due and payable in such Fiscal Year. Any amount transferred from the Rate Stabilization Fund to the Wastewater Fund in any Fiscal Year, to the extent in excess of the amount of Net Revenues received by the City in that Fiscal Year and deposited into the Rate Stabilization Fund, will be included in the calculation of Net Debt Service under this subsection (b).

SECTION 5.7. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Gross Revenues or the Net Revenues over the Installment Payments. Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Debt under Section 5.8, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

SECTION 5.8. *Issuance of Parity Debt.* Except for obligations incurred to prepay or discharge the Installment Payments or any Parity Debt, the City may not issue or incur any Parity Debt during the Term hereof unless:

- (a) No Event of Default has occurred and is continuing;
- (b) The Net Revenues (excluding any amounts derived from the Rate Stabilization Fund), calculated in accordance with sound accounting principles, as shown by the books of the City for the most recent completed Fiscal Year for which audited financial statements of the City are available, or for any more recent consecutive 12 month period selected by the City, in either case verified by an independent Accountant or a Fiscal Consultant or shown in the audited financial statements of the City, plus (at the option of the City) any Additional Revenues, at least equal 120% of Maximum Annual Debt Service (taking into account the Parity Debt then proposed to be issued); and
- (c) Except in the case of Parity Debt representing a loan from the State or any agency of the State, or a loan from the federal government or any agency thereof, there shall be established from the proceeds of such Parity Debt a reserve fund for the security of such Parity Debt, in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by the City with respect to such Parity Debt during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and
- (d) The trustee or fiscal agent for such Parity Debt (if any) is the same entity performing the functions of Trustee under the Indenture.

SECTION 5.9. *Operation of Wastewater System in Efficient and Economical Manner.* The City covenants and agrees to operate the Wastewater System in an efficient and economical manner and to operate, maintain and preserve the Wastewater System in good repair and working order.

SECTION 5.10. *Tax Covenants.*

(a) Generally. The City shall not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, interest on the Bonds to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to become "private activity bonds" within the meaning of Section 141(a) of the Tax Code, or which would meet the private loan financing test of Section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The City shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the Closing Date would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(e) Rebate Requirement. The City will calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The City will pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from Gross Revenues or any other source of legally available funds of the City. The City will keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Bonds, records of the determinations made under this subsection (e). The Authority has no duty or responsibility to monitor or ensure compliance by the City with its obligations under this subsection (e).

(f) Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

SECTION 5.11. *Continuing Disclosure.* The City hereby covenants and agrees that it will execute and deliver the Continuing Disclosure Certificate on the Closing Date, and that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate and provide to the Bond Insurer a copy of any materials disseminated by the City in compliance therewith. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate will not constitute an Event of Default hereunder; *provided, however,* that any Participating Underwriter (as such term is defined in the Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section 5.11.

SECTION 5.12. *Covenants Regarding Financing Agreement and Participation Agreement.* The City shall promptly collect all amounts due under the Financing Agreement and shall enforce its rights thereunder. The City will not amend, modify or terminate any of the terms of the Participation Agreement or the Financing Agreement, or consent to any such amendment, modification or termination, if such amendment, modification or termination would materially adversely affect the interests of the Bond Owners.

SECTION 5.13. *Assignment and Amendment Hereof.* This Agreement may not be assigned by the City in whole or in part. This Agreement may be amended by the City and the Authority, but only (a) for the purpose of providing for the issuance of any Parity Debt under and in accordance with Section 5.8, or (b) with the prior written consent of the Bond Insurer but without the consent of any Bond Owners, to the extent permitted by law but only for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements hereafter to be observed, to pledge or assign additional security for the Installment Payments, or to surrender any right or power herein reserved to or conferred upon the City;
- (ii) to cure any ambiguity, inconsistency or omission, or correct any defective provision, contained in this Indenture, or in any other respect whatsoever, as the City may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners in the opinion of Bond Counsel filed with the City, the Authority, the Bond Insurer and the Trustee;
- (iii) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Bonds under the Tax Code, in the opinion of Bond Counsel filed with the City, the Authority, the Bond Insurer and the Trustee.

SECTION 5.14. *Information to Bond Insurer.* The City shall cooperate with the Bond Insurer in all regards as may be required to comply with the terms and provisions of the Bond Insurance Policy and as required to enable the Trustee to receive payments under the Bond Insurance Policy. The City shall provide such information to the Bond Insurer from time to time as the Bond Insurer may reasonably request in writing.

SECTION 5.15. *Further Assurances.* The City will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority, the Bond Insurer or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.1. *Events of Default Defined.* The following are Events of Default:

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 60

days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority, the Bond Insurer or the Trustee; *provided, however*, that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 60-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 60 day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (e) The occurrence of any event defined to be an event of default under any Parity Debt Documents.

For purposes of determining whether any Event of Default has occurred under and as described in the preceding clause (a), no effect will be given to payments made by the Bond Insurer under the Bond Insurance Policy.

SECTION 6.2. Remedies on Default. Whenever any Event of Default has occurred and is continuing, the Trustee as assignee of the Authority has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable. Notwithstanding the foregoing provisions of this subsection (a), however, if, at any time after the principal components of the unpaid Installment Payments have been so declared due and payable under this subsection (a), and before any judgment or decree for the payment of the moneys due has been obtained or entered, the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the Overdue Rate, and the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good, then, and in

every such case, the Trustee will rescind and annul such declaration and its consequences. However, no such rescission and annulment extends to or affects any subsequent default, or impairs or exhausts any right or power consequent thereon. As provided in Section 6.6, the Trustee is required to exercise the remedies provided herein in accordance with the Indenture.

- (b) Take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy will be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or will be construed to be a waiver thereof. Each right and power may be exercised from time to time and as often as the Trustee deems expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Bonds employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred. The provisions of this Section 6.4 survive the expiration of the Term of this Agreement.

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement herein is breached by either party and is thereafter waived by the other party, such waiver is limited to the particular breach so waived and does not waive any other breach.

SECTION 6.6. *Trustee, the Bond Insurer and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. The Trustee, the Bond Insurer and the Owners of the Bonds will exercise such rights and remedies as provided in the Indenture.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. *Security Deposit.* Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Trustee an amount of cash which, together with other available amounts, is either (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an Independent Accountant (which opinion is addressed and delivered to the Trustee and the Bond Insurer), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City posts a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of Net Revenues and all other security provided by this Agreement for said obligations, will cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from such security deposit. Said security deposit constitutes a special fund for the payment of such Installment Payments in accordance with the provisions hereof.

Payments made by the Bond Insurer under the Bond Insurance Policy will not be considered in determining whether the City has paid and discharged any or all of the Installment Payments under the preceding provisions of this Section 7.1.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on which the Bonds are subject to optional redemption under Section 2.03(a) of the Indenture. Such option shall be exercised by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, (b) the interest component of the Installment Payment required to be paid on or accrued to such date, and (c) the premium (if any) then required to be paid upon the corresponding redemption of the Bonds under Section 2.03(a) of the Indenture. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid between such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee.

SECTION 7.3. *Credit for Amounts on Deposit.* If the City prepays the Installment Payments in full under this Article VII, such that the Indenture is discharged by its terms, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under this Agreement will be credited towards the amounts then required to be so prepaid.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. *Investment of Funds.* All moneys in the Reserve Fund, the Installment Payment Fund and the Project Fund shall be invested by the Trustee solely in Permitted Investments under the written direction of the City. In the absence of any such direction from the City, the Trustee shall invest any such moneys in clause (i) of the definition of Permitted Investments. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may (but is not obligated to) act as principal or agent in the acquisition or disposition of any investment. The Trustee shall incur no liability for losses arising from any investments made under this Section.

The City acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the City the right to receive brokerage confirmations of security transactions as they occur, the City specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the City periodic transaction statements which include detail for all investment transactions made by the Trustee hereunder; provided that the Trustee is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

All Permitted Investments acquired under this Section 8.1 shall be valued in accordance with the provisions of Section 4.05 of the Indenture.

SECTION 8.2. *Notices.* Any notice, request, complaint, demand or other communication under this Agreement must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States of America mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City, the Trustee or the Bond Insurer may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority:

Association of Bay Area Governments
101 Eighth Street
Oakland, California 94607
Attention: Public Finance Director
Fax: (510) 464-8468

If to the City:

City of Ukiah
300 Seminary Avenue
Ukiah, California 95482
Attention: City Manager
Fax: (707) 463-6204

If to the Trustee:

Wells Fargo Bank, National Association
555 Montgomery Street, 10th Floor
San Francisco, California 94111
Attention: Corporate Trust Services
Fax: (415) 395-9064

If to the Bond Insurer:

XL Capital Assurance, Inc.
1221 Avenue of the Americas
New York, New York 10020
Fax: (212) 944-3777
Attention: Surveillance

SECTION 8.3. *Governing Law.* This Agreement is construed in accordance with and governed by the laws of the State.

SECTION 8.4. *Binding Effect.* This Agreement inures to the benefit of and is binding on the Authority, the City, the Bond Insurer and their respective successors and assigns, subject to the limitations contained herein.

SECTION 8.5. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Agreement is for any reason held invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.6. *Article and Section Headings and References.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

SECTION 8.7. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediate preceding Business Day.

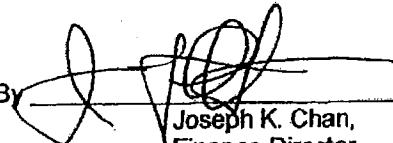
SECTION 8.8. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which is an original and all of which together constitute one and the same instrument.

SECTION 8.9. *Waiver of Personal Liability.* No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement. Nothing herein relieves any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.10. *Bond Insurer as Third Party Beneficiary.* The Bond Insurer is hereby made a third party beneficiaries hereof and is entitled to the benefits of this Agreement with the same force and effect as if the Bond Insurer were a party hereto.

IN WITNESS WHEREOF, the Authority, the Trustee and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**ASSOCIATION OF BAY AREA
GOVERNMENTS, as Seller**

By  _____
Joseph K. Chan,
Finance Director

CITY OF UKIAH, as Purchaser

By _____
Mayor

ATTEST:

By _____
City Clerk

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

By _____
Authorized Officer

IN WITNESS WHEREOF, the Authority, the Trustee and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**ASSOCIATION OF BAY AREA
GOVERNMENTS, as Seller**

By _____
Joseph K. Chan,
Finance Director

CITY OF UKIAH, as Purchaser

By _____
City Manager

ATTEST:

By Maria Clevilla
City Clerk

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

By _____
Authorized Officer

IN WITNESS WHEREOF, the Authority, the Trustee and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**ASSOCIATION OF BAY AREA
GOVERNMENTS, as Seller**

By _____
Joseph K. Chan,
Finance Director

CITY OF UKIAH, as Purchaser

By _____
Mayor

ATTEST:

By _____
City Clerk

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

By  _____
Authorized Officer

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
September 1, 2006		\$ 1,659,180.83	\$ 1,659,180.83
March 1, 2007		1,668,450.00	1,668,450.00
September 1, 2007		1,668,450.00	1,668,450.00
March 1, 2008		1,668,450.00	1,668,450.00
September 1, 2008		1,668,450.00	1,668,450.00
March 1, 2009	\$ 400,000	1,668,450.00	2,068,450.00
September 1, 2009		1,660,450.00	1,660,450.00
March 1, 2010	1,200,000	1,660,450.00	2,860,450.00
September 1, 2010		1,636,450.00	1,636,450.00
March 1, 2011	1,600,000	1,636,450.00	3,236,450.00
September 1, 2011		1,604,450.00	1,604,450.00
March 1, 2012	1,660,000	1,604,450.00	3,264,450.00
September 1, 2012		1,571,250.00	1,571,250.00
March 1, 2013	1,720,000	1,571,250.00	3,291,250.00
September 1, 2013		1,536,850.00	1,536,850.00
March 1, 2014	1,780,000	1,536,850.00	3,316,850.00
September 1, 2014		1,501,250.00	1,501,250.00
March 1, 2015	1,850,000	1,501,250.00	3,351,250.00
September 1, 2015		1,464,250.00	1,464,250.00
March 1, 2016	1,930,000	1,464,250.00	3,394,250.00
September 1, 2016		1,425,650.00	1,425,650.00
March 1, 2017	2,010,000	1,425,650.00	3,435,650.00
September 1, 2017		1,385,450.00	1,385,450.00
March 1, 2018	2,090,000	1,385,450.00	3,475,450.00
September 1, 2018		1,343,650.00	1,343,650.00
March 1, 2019	2,180,000	1,343,650.00	3,523,650.00
September 1, 2019		1,298,687.50	1,298,687.50
March 1, 2020	2,280,000	1,298,687.50	3,578,687.50
September 1, 2020		1,250,237.50	1,250,237.50
March 1, 2021	2,370,000	1,250,237.50	3,620,237.50
September 1, 2021		1,199,875.00	1,199,875.00
March 1, 2022	2,480,000	1,199,875.00	3,679,875.00
September 1, 2022		1,145,625.00	1,145,625.00

<u>Installment Payment Date⁽¹⁾</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
March 1, 2023	\$ 2,590,000	\$ 1,145,625.00	\$ 3,735,625.00
September 1, 2023		1,088,968.75	1,088,968.75
March 1, 2024	2,710,000	1,088,968.75	3,798,968.75
September 1, 2024		1,029,687.50	1,029,687.50
March 1, 2025	2,830,000	1,029,687.50	3,859,687.50
September 1, 2025		966,012.50	966,012.50
March 1, 2026	2,960,000	966,012.50	3,926,012.50
September 1, 2026		899,412.50	899,412.50
March 1, 2027	3,100,000	899,412.50	3,999,412.50
September 1, 2027		827,725.00	827,725.00
March 1, 2028	3,240,000	827,725.00	4,067,725.00
September 1, 2028		752,800.00	752,800.00
March 1, 2029	3,390,000	752,800.00	4,142,800.00
September 1, 2029		674,406.25	674,406.25
March 1, 2030	3,550,000	674,406.25	4,224,406.25
September 1, 2030		592,312.50	592,312.50
March 1, 2031	3,720,000	592,312.50	4,312,312.50
September 1, 2031		506,287.50	506,287.50
March 1, 2032	3,900,000	506,287.50	4,406,287.50
September 1, 2032		416,100.00	416,100.00
March 1, 2033	4,080,000	416,100.00	4,496,100.00
September 1, 2033		319,200.00	319,200.00
March 1, 2034	4,270,000	319,200.00	4,589,200.00
September 1, 2034		217,787.50	217,787.50
March 1, 2035	4,480,000	217,787.50	4,697,787.50
September 1, 2035		111,387.50	111,387.50
March 1, 2036	<u>4,690,000</u>	<u>111,387.50</u>	<u>4,801,387.50</u>

(1) Installment Payment Dates are the fifth (5th) Business Day immediately preceding each Interest Payment Date shown in the table.

APPENDIX B

DESCRIPTION OF PROJECT

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

APPENDIX C

FORM OF REQUISITION

WRITTEN REQUISITION NO. ____ FOR DISBURSEMENT FROM THE PROJECT FUND

The undersigned hereby states and certifies:

(i) that I am the duly appointed, qualified and acting _____ of the City of Ukiah (the "City"), and as such, I am familiar with the facts herein certified and am authorized and qualified to certify the same;

(ii) that I am a duly designated "City Representative" of the City, as such term is defined in that certain Installment Sale Agreement dated as of March 1, 2006 (the "Installment Sale Agreement"), among the Association of Bay Area Governments, the City and Wells Fargo Bank, National Association, as trustee, as trustee (the "Trustee");

(iii) that the Trustee is hereby requested to disburse this date from the Project Fund established under Section 3.6 of the Installment Sale Agreement to the payees set forth on Exhibit A attached hereto and by this reference incorporated herein, the respective sum set forth opposite each such payee, for the purposes identified therein;

(iv) that each item to be paid pursuant to this Requisition has been properly incurred, is a proper charge against the Project Fund and has not been the basis of any previous disbursement; and

(v) that each amount to be disbursed herein is for payment of a Project Cost.

Capitalized terms used herein and not otherwise defined have the meanings given them in the Installment Sale Agreement.

Dated: _____, 200__

CITY OF UKIAH

By: _____
Name:
Title:

EXHIBIT A
PROJECT COST DISBURSEMENTS

Payee Name and Address

Purpose of Obligation

Amount

INDENTURE OF TRUST

This INDENTURE OF TRUST (this "Indenture"), dated as of March 1, 2006, is between the ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority organized and existing under the laws of the State of California (the "Authority") and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the "Trustee").

BACKGROUND

1. The Authority is a joint exercise of powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and is authorized under Article 4 thereof (the "Bond Law") to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities, and to provide financing for public capital improvements of local agencies within the State of California.

2. The Authority and the Trustee have entered into an Installment Sale Agreement (the "Installment Sale Agreement") with the City of Ukiah (the "Local Agency") for the purpose of financing public capital improvements relating to the wastewater enterprise of the Local Agency, and the Authority has agreed to issue its revenue bonds to provide the funds to finance such public capital improvements.

3. The Executive Board of the Authority has authorized the issuance of its Association of Bay Area Governments 2006 Water and Wastewater Revenue Bonds, Series A in the aggregate principal amount of \$75,060,000 (the "Bonds") under the Bond Law and this Indenture for the purpose of providing the funds required to finance such public capital improvements.

4. The Bonds will be secured by a pledge of and first lien on the revenues to be derived from installment payments made by the Local Agency under the Installment Sale Agreement, and such revenues have been determined to be sufficient in time and amount to pay the principal of and interest on the Bonds when due.

5. Payment of the principal of and interest on the Bonds when due is insured by XL Capital Assurance Inc. (the "Bond Insurer").

6. The Authority has determined that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done or taken.

AGREEMENT

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and

EXHIBIT “K”

INDENTURE OF TRUST

between the

ASSOCIATION OF BAY AREA GOVERNMENTS

and

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

Dated as of March 1, 2006

Relating to

**\$75,060,000
Association of Bay Area Governments
2006 Water and Wastewater Revenue Bonds,
Series A**

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APPENDIX A - DEFINITIONS
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subject to which the Bonds are to be issued and received, and in consideration of the promises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds and for the benefit of the Bond Insurer, as follows

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in Appendix A when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

TERMS OF BONDS

SECTION 2.01. *Authorization of Bonds* The Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the "2006 Water and Wastewater Revenue Bonds, Series A" and shall be issued in the aggregate principal amount of \$75,060,000. The Bonds are authorized to be issued for the purpose of providing funds to finance the Projects, as set forth in this Indenture and in the Installment Sale Agreement.

SECTION 2.02. *Terms of the Bonds*. The Bonds are issuable in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds will be dated as of the Closing Date, and will mature on March 1 in the years and in the respective principal amounts and bear interest (calculated on the basis of a 360-day year comprised of twelve 30-day months) at the respective rates per annum, as set forth in the following tables

<u>Maturity Date</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
2009	\$ 400,000	4.000%	2020	\$ 2,280,000	4.250%
2010	1,200,000	4.000	2021	2,370,000	4.250
2011	1,600,000	4.000	2022	2,480,000	4.375
2012	1,660,000	4.000	2023	2,590,000	4.375
2013	1,720,000	4.000	2024	2,710,000	4.375
2014	1,780,000	4.000	2025	2,830,000	4.500
2015	1,850,000	4.000	2026	2,960,000	4.500
2016	1,930,000	4.000	2030	13,280,000	4.625
2017	2,010,000	4.000	2032	7,620,000	4.625
2018	2,090,000	4.000	2036	17,520,000	4.750
2019	2,180,000	4.125			

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the

payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Redemption of Bonds.*

(a) Optional Redemption; Mandatory Redemption from Optional Prepayment Revenues. The Bonds maturing on or before March 1, 2014, are not subject to optional redemption prior to their respective stated maturities. The Bonds maturing on or after March 1, 2015, are subject to optional redemption prior to maturity, at the option of the Authority, in whole or in part among maturities on such basis as designated by the Authority and by lot within a maturity, from any available source of funds, on March 1, 2014, and on any Interest Payment Date thereafter, at a redemption price (expressed as a percentage of the principal amount of Bonds to be redeemed) as set forth in the following table, together with accrued interest thereon to the date fixed for redemption, without premium.

<u>Redemption Dates</u>	<u>Redemption Price</u>
March 1, 2014 and September 1, 2014	101.0%
March 1, 2015 and thereafter	100.0

The Authority must give the Trustee written notice of its intention to redeem Bonds under this subsection (a), and the manner of selecting such Bonds for redemption from among the maturities thereof and the amount of the redemption premium thereon, in sufficient time to enable the Trustee to give notice of such redemption in accordance with subsection (c) of this Section.

The Bonds may be redeemed under this subsection (a) from any source of available funds, and must be redeemed from any Optional Prepayment Revenues, and in that event the aggregate principal amount of each maturity of the Bonds to be redeemed must correspond to the aggregate principal amount of the Installment Payments which are prepaid. Upon the receipt by the Trustee of notice of the prepayment of any Installment Payments which will produce Optional Prepayment Revenues, the Trustee shall immediately notify the Authority and the Bond Insurer in writing of such fact, which notice shall identify the aggregate principal amount of such Installment Payments to be prepaid and the prepayment date thereof.

(b) Mandatory Sinking Fund Redemption. The Term Bonds are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on March 1 in the respective years as set forth in the following tables;

provided, however, that if some but not all of the Term Bonds have been redeemed under subsection (a) of this Section, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Term Bonds Maturing March 1, 2030

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2027	\$ 3,100,000
2028	3,240,000
2029	3,390,000
2030 (Maturity)	3,550,000

**Mandatory Sinking Fund Schedule
Term Bonds Maturing March 1, 2032**

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2031	\$ 3,720,000
2032 (Maturity)	3,900,000

**Mandatory Sinking Fund Schedule
Term Bonds Maturing March 1, 2036**

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2033	\$ 4,080,000
2034	4,270,000
2035	4,480,000
2036 (Maturity)	4,690,000

(c) Notice of Redemption. The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, to the Bond Insurer, to the Securities Depositories and to one or more Information Services, at least 30 but not more than 60 days prior to the date fixed for redemption; *provided, however, that neither failure to receive any such notice so mailed nor any defect therein will affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon.*

Such notice must state the date of the notice, the redemption date, the redemption place and the redemption price and must designate the CUSIP numbers, the Bond numbers (if less than all Bonds of a maturity are to be redeemed) and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and must require that such Bonds be then surrendered at the Office of the Trustee identified in such notice for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue

from and after the redemption date. In addition, the redemption notice must state that the Authority has the right to rescind the notice as provided in subsection (d) of this Section.

(d) Right to Rescind Notice of Optional Redemption. The Authority has the right to rescind any notice of the optional redemption of Bonds under subsection (a) of this Section by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of optional redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for optional redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of optional redemption in the same manner as the original notice of redemption was sent under subsection (c) of this Section.

(e) Manner of Redemption. Whenever provision is made in this Section 2.03 for the redemption of less than all of the Bonds of the same maturity, the Trustee shall select the Bonds to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, all Bonds will be deemed to be comprised of separate \$5,000 denominations and such separate denominations will be treated as separate Bonds which may be separately redeemed.

(f) Partial Redemption of Bonds. If only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(g) Effect of Redemption. From and after the date fixed for redemption, if notice of redemption has been duly mailed and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. Unless otherwise directed in writing by the Authority, the Trustee shall cancel and destroy all Bonds redeemed under this Section 2.03.

SECTION 2.04. *Book Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which is registered in the name of the Nominee, the Authority and the Trustee have no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to

any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds.

The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Form and Execution of Bonds.* The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Finance Director of the Authority shall execute, and the Public Finance Director of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.06. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under this Section 2.06. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority

shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds under this subsection (b). The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.06, any Bonds selected by the Trustee for redemption under Section 2.03, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.07. *Registration Books*. The Trustee will keep or cause to be kept, at its Office, sufficient records for the registration and registration of transfer of the Bonds, which must at all times during normal business hours, and upon reasonable notice, be open to inspection by the Authority and the Bond Insurer; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on the Registration Books, Bonds as hereinbefore provided. Upon the occurrence of an Event of Default which requires the Bond Insurer to make payments under the Bond Insurance Policy, the Bond Insurer and any designated agent thereof shall have access to the Registration Books upon reasonable prior notice to the Trustee.

SECTION 2.08. *Bonds Mutilated, Lost, Destroyed or Stolen*. If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.08, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of Bonds.* Upon the execution and delivery of this Indenture, the Authority shall execute and deliver the Bonds to the Trustee in the aggregate principal amount of \$75,060,000, and the Trustee shall authenticate and deliver the Bonds to the Original Purchaser upon receipt of a Request of the Authority therefor.

SECTION 3.02. *Deposit and Application of Proceeds.* On the Closing Date, the Trustee shall deposit the proceeds of the Bonds into a special fund to be held by the Trustee and known as the "Bond Proceeds Account." On the Closing Date, the Trustee shall apply the amounts on deposit in the Bond Proceeds Account in the amounts and for the respective purposes as follows

- (a) The Trustee shall deposit the amount of \$209,996.45 in the Costs of Issuance Fund.
- (b) The Trustee shall deposit the amount of \$2,400,000.00 in the Capitalized Interest Fund.
- (c) The Trustee shall deposit the amount of \$71,800,000.00 in the Local Agency Project Fund, which amount includes the \$500,000.00 good faith deposit received by the Trustee upon the sale of the Bonds.

SECTION 3.03. *Costs of Issuance Fund.* There is hereby established a separate fund to be known as the "Costs of Issuance Fund", to be held by the Trustee in trust for the benefit of the Authority. The Trustee shall disburse moneys in the Costs of Issuance Fund from time to time to pay the Costs of Issuance. The Trustee shall disburse amounts from the Costs of Issuance Fund from time to time upon receipt of a Request of the Authority stating (a) the person to whom payment is to be made, (b) the amounts to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior Request of the Authority; in each case together with a statement or invoice for each amount requested thereunder. Each such Request of the Authority shall be countersigned or otherwise approved in writing by an authorized representative of the Local Agency. On June 1, 2006, the Trustee will transfer any amounts remaining in any account within the Costs of Issuance Fund to the Local Agency Project Fund.

SECTION 3.04. *Validity of Bonds.* The validity of the authorization and issuance of the Bonds are not affected in any way by any proceedings taken by the Authority with respect to the application of the proceeds thereof, and the recital contained in the Bonds that the same are issued under the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

SECTION 4.01. *Pledge of Revenues; Assignment of Rights.* Subject to the provisions of Section 6.03, the Bonds are secured by a pledge of, lien on and security interest in all of the Revenues and a pledge of all of the moneys in the Revenue Fund, including all amounts derived from the investment of such moneys. The Bonds are equally secured by a pledge, charge and lien upon the Revenues and such moneys without priority for number, date of Bonds, date of execution or date of delivery. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that out of the Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 4.02.

The Authority hereby transfers in trust and assigns all of the Revenues to the Trustee, for the benefit of the Owners from time to time of the Bonds. The Trustee is entitled to and shall receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and, subject to the provisions hereof, shall take all steps, actions and proceedings reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the Local Agency under the Installment Sale Agreement.

SECTION 4.02. *Receipt, Deposit and Application of Revenues.*

(a) Deposit of Revenues; Revenue Fund. The Trustee shall deposit all Revenues promptly upon receipt thereof in a special fund designated as the "Revenue Fund" which the Trustee shall establish, maintain and hold in trust hereunder; *provided, however,* that the Trustee shall deposit all Optional Prepayment Revenues in the Redemption Fund upon receipt by the Trustee, to be applied to redeem the Bonds under Section 2.03(a).

(b) Application of Revenue Fund and Accounts Therein. The Trustee shall apply amounts on deposit in the Revenue Fund at the following times in the following order of priority

- (i) **Interest Payments.** On or before each date on which the interest on the Bonds is payable, the Trustee shall apply amounts on deposit in the Revenue Fund for the purpose of paying the interest on the Bonds as it comes due and payable (including accrued interest on any Bonds redeemed prior to maturity).
- (ii) **Principal Payments.** On or before each date on which the principal of the Bonds is payable at maturity or upon the mandatory sinking fund redemption of Term Bonds under Section 2.03(b), the Trustee apply amounts on deposit in the Revenue Fund for the purpose of (1) paying the principal of the Bonds at the maturity thereof, or (2) paying the principal of any Term Bonds upon the mandatory sinking fund redemption thereof under Section 2.03(b).

(c) Transfer of Surplus Funds. If any amount remains on deposit in the Revenue Fund following the payment of debt service on the Bonds on any Interest Payment Date,

the Trustee shall transfer such remaining amount to the installment payment fund established under Section 4.4(b) of the Installment Sale Agreement.

SECTION 4.03. *Redemption Fund.* There is hereby established a separate fund to be known as the "Redemption Fund", which shall be held by the Trustee in trust. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the redemption price of the Bonds to be redeemed under Section 2.03(a).

SECTION 4.04. *Capitalized Interest Fund.* There is hereby established a separate fund to be known as the "Capitalized Interest Fund", which shall be held by the Trustee in trust. On the Closing Date, the Trustee shall deposit a portion of the proceeds of the Bonds in the Capitalized Interest Fund under Section 3.02(b). On the Business Day immediately preceding September 1, 2006 and September 1, 2007, the Trustee shall transfer the following amounts from the Capitalized Interest Fund to the Revenue Fund to be applied to pay interest coming due and payable on the Bonds:

<u>Transfer Date</u>	<u>Amount</u>
September 1, 2006	\$1,400,000.00
September 1, 2007	All remaining amounts

Following the final transfer on the Business Day immediately preceding September 1, 2007, the Trustee shall close the Capitalized Interest Fund.

SECTION 4.05. *Investments.* All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely in Permitted Investments at the written direction of the Authority. In the absence of any such direction from the Authority, the Trustee shall invest any such moneys in clause (i) of the definition of Permitted Investments. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. As provided in Section 8.1 of the Installment Sale Agreement, moneys in the Reserve Fund and the Installment Payment which are established thereunder shall be invested by the Trustee solely in Permitted Investments under the written direction of the City.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee may (but is not obligated to) act as principal or agent in the acquisition or disposition of any investment. The Trustee shall incur no liability for losses arising from any investments made under this Section.

The Authority acknowledges that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic transaction statements which include detail for all investment transactions made by the Trustee hereunder; provided that the Trustee is not obligated to provide an accounting for any fund or account that (a) has a balance of \$0.00 and (b) has not had any activity since the last reporting date.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder.

SECTION 4.06. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value as such term is defined in subsection (d) below. The Trustee has no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Certificate or Request of the Authority. Such valuations shall be made annually no later than March 1 in each year.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code shall be valued at cost thereof (consisting of present value thereof within the meaning of Section 148 of the Tax Code); provided that the Authority must inform the Trustee which funds are subject to a yield restriction, and must provide the Trustee with any necessary valuation criteria or formulae.

(c) Except as provided in the preceding subsection (b), for the purpose of determining the amount in any fund, the Trustee shall value Permitted Investments credited to such fund at least annually at the Fair Market Value thereof. The Trustee may utilize and rely on computerized securities pricing services that may be available to it, including those available through its regular accounting system. If and as directed by the Authority in writing, the Trustee shall sell or present for redemption any Permitted Investment so purchased by the Trustee whenever it is necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee has no liability or responsibility for any loss resulting therefrom.

(d) For purposes of this Section 4.06, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security – State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

ARTICLE V

FINANCIAL COVENANTS RELATING TO BONDS

SECTION 5.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal, interest and premium (if any) to become due in respect of all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Revenues and other assets pledged for such payment as provided in this Indenture.

SECTION 5.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the Owner of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest are not entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 5.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, including other programs under the Bond Law, and reserves the right to issue other obligations for such purposes.

SECTION 5.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 5.05. *Accounting Records and Financial Statements.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries are made of all transactions made by the Trustee relating to the proceeds of Bonds, the Revenues and all funds and accounts established under this Indenture. Such books of record and account shall be available for inspection by the Authority, the Bond Insurer and the Local Agency, during regular business hours with reasonable prior notice.

SECTION 5.06. *No Additional Debt.* Except for the Bonds, the Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part. Nothing in this

Section 5.06 restricts the authority of the Local Agency to issue its parity obligations in accordance with the Installment Sale Agreement.

SECTION 5.07. *Tax Covenants Relating to Bonds.*

(a) Generally. The Authority will not take any action or permit to be taken any action within its control which would cause or which, with the passage of time if not cured would cause, interest on the Bonds to become includable in gross income for federal income tax purposes.

(b) Private Activity Bond Limitation. The Authority will not use the proceeds of the Bonds in a manner which would cause the Bonds to become "private activity bonds" within the meaning of Section 141(a) of the Tax Code or to meet the private loan financing test of Section 141(c) of the Tax Code.

(c) Federal Guarantee Prohibition. The Authority shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(d) No Arbitrage. The Authority will not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code.

(e) Rebate of Excess Investment Earnings. Under the Installment Sale Agreement, the Local Agency will calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code.

(f) Maintenance of Tax-Exemption. The Authority will take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

The Trustee has no duty to monitor the compliance by the Authority with any of the covenants contained in this Section 5.07.

SECTION 5.08. *Covenants With Respect to Installment Sale Agreement.*

(a) Collection of Revenues. The Trustee shall collect and cause to be paid to it all Revenues promptly as such Revenues become due and payable, and shall vigorously enforce and cause to be enforced all rights of the Trustee under and with respect to the Installment Sale Agreement.

(b) Amendment of Installment Sale Agreement. The Authority and the Local Agency may at any time amend or modify the Installment Sale Agreement under the applicable provisions thereof, but only: (i) with the prior written consents of the Bond Insurer and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, or (b) with the prior written consent of the Bond Insurer but without the consent of any of the Bond Owners, if such amendment or modification is for any one or more of the purposes set forth in Section 5.12 of the Installment Sale Agreement.

(c) Notification of Local Agency Default. Upon receiving actual knowledge of either (i) the failure by the Local Agency to pay any Installment Payment in full when due, or (ii) the occurrence of any other event of default under the Installment Sale Agreement, the Trustee will promptly notify the Authority and the Bond Insurer of such failure or event of default by telephone, fax or other form of telecommunication, promptly confirmed in writing. Such notice shall identify the nature of the default and the actions which the Trustee has taken and intends to take with respect thereto.

(d) Exercise of Remedies under Installment Sale Agreement. Upon the occurrence of an event of default under the Installment Sale Agreement, with the prior written consent of the Bond Insurer the Trustee may, and if requested in writing by the Bond Insurer or (with the prior written consent of the Bond Insurer) if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall, exercise any and all remedies which are available to the Trustee under the Installment Sale Agreement.

SECTION 5.09. *Non-Liability of Authority for Trustee Covenants.* The Authority has no responsibility for the performance and observance by the Trustee of its covenants under this Indenture, and shall incur no liability or obligations arising with respect thereto.

SECTION 5.10. *Further Assurances.* The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Bond Insurer and the Owners of the Bonds the rights and benefits provided in this Indenture.

ARTICLE VI

THE TRUSTEE

SECTION 6.01. *Appointment of Trustee.* Wells Fargo Bank, National Association is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that it will maintain a Trustee acceptable to the Bond Insurer having a corporate trust office in the State, with a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank or trust company publishes a report of condition at least annually under law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee is hereby authorized to pay the principal of and interest and redemption premium (if any) on the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged.

SECTION 6.02. *Acceptance of Trusts.* The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions

- (a) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill and diligence in their exercise, as a prudent person would use in the conduct of its own affairs.
- (b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee may conclusively rely on an opinion of counsel as full and complete protection for any action taken or suffered by it hereunder.
- (c) The Trustee is not responsible for any recital herein, in the Installment Sale Agreement or in the Bonds, or for any of the supplements hereto or thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee is not bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority hereunder. The Trustee may conclusively rely on an opinion of counsel as full and complete protection for any action taken or suffered by it hereunder.
- (d) The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidences of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Bonds then Outstanding.
- (e) The Trustee shall be protected in acting, in good faith, upon any notice, request, consent, certificate, order, affidavit, letter, telegram, facsimile transmission, electronic mail or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith under this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee is not bound to recognize

any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

- (f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.02(h), shall also be at liberty to accept a Certificate of the Authority to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same.
- (g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it is not answerable for other than its negligence or willful default. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.
- (h) The Trustee is not required to take notice or be deemed to have notice of any Event of Default hereunder except the failure by the Local Agency to make any of the payments to the Trustee required to be made by the Local Agency under the Installment Sale Agreement or the failure by the Authority to file with the Trustee any document required by this Indenture to be so filed subsequent to the issuance of the Bonds, unless the Trustee is specifically notified in writing of such default by the Authority or by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Trust Office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder except as aforesaid.
- (i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, accountants and representatives, has the right to inspect all books, papers and records of the Authority pertaining to the Bonds, and to make copies of any of such books, papers and records such as may be desired but which is not privileged by statute or by law.
- (j) The Trustee is not required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises hereof.
- (k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee has the right, but is not required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may

be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

- (l) Before taking any action referred to in Section 8.02, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.
- (m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.
- (n) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.
- (o) The Trustee agrees to accept and act upon facsimile transmission of written instructions and/or directions under this Indenture provided, however, that: (i) subsequent to such facsimile transmission of written instructions and/or directions the Trustee shall forthwith receive the originally executed instructions and/or directions, (ii) such originally executed instructions and/or directions shall be signed by a person as may be designated and authorized to sign for the party signing such instructions and/or directions, and (iii) the Trustee shall have received a current incumbency certificate containing the specimen signature of such designated person.

SECTION 6.03. *Fees, Charges and Expenses of Trustee.* The Trustee is entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Upon the occurrence of an Event of Default hereunder, but only upon an Event of Default, the Trustee has a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder, for the foregoing fees, charges and expenses incurred by it respectively.

SECTION 6.04. *Notice to Bond Insurer and Bond Owners of Default.* If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been

given or is deemed to have notice, as provided in Section 6.02(h), then the Trustee shall promptly give written notice thereof by first-class mail to the Bond Insurer and the Owner of each such Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however*, that unless such Event of Default consists of the failure by the Authority to make any payment when due, the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that such Event of Default does not materially adversely affect the interests of the Bond Owners or that it is otherwise not in the best interests of the Bond Owners to give such notice.

SECTION 6.05. *Intervention by Trustee.* In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.02(l), shall do so if requested in writing by the Owners of a majority in aggregate principal amount of such Bonds then Outstanding.

SECTION 6.06. *Removal of Trustee.* The Bond Insurer may at any time, and the Authority may so long as no Event of Default has occurred and is continuing, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee at least 30 days prior to the effective date of each removal, whereupon the Authority or such Owners, as the case may be, shall appoint a successor or successors thereto in accordance with Section 6.08; provided that any such successor shall be a bank or trust company meeting the requirements set forth in Section 6.01. Such removal and appointment shall become effective as provided in Section 6.07.

SECTION 6.07. *Resignation by Trustee.* The Trustee and any successor Trustee may at any time give 30 days' written notice of its intention to resign as Trustee hereunder, such notice to be given to the Authority, the Bond Insurer and the Local Agency by registered or certified mail. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee.

Any resignation or removal of the Trustee under Section 6.06 or this Section 6.07, and any appointment of a successor Trustee under Section 6.08, shall become effective upon written acceptance of appointment by the successor Trustee. Upon such acceptance, the Authority shall cause notice thereof to be given by first class mail, postage prepaid, to the Bond Insurer and to the Bond Owners at their respective addresses set forth on the Registration Books.

SECTION 6.08. *Appointment of Successor Trustee.* In the event of the removal or resignation of the Trustee under Sections 6.06 or 6.07, respectively, with the prior written consent of the Bond Insurer, the Authority shall promptly appoint a successor Trustee. If the Authority fails for any reason to appoint a successor Trustee within 90 days following the delivery to the Trustee of the instrument described in Section 6.06 or within 90 days following the receipt of notice by the Authority under Section 6.07, the Trustee may, at the expense of the Authority, apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.01 hereof. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such 90-day period.

SECTION 6.09. *Merger or Consolidation.* Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company

resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall meet the requirements set forth in Section 6.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

SECTION 6.10. *Concerning any Successor Trustee.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Request of the Authority, or of the Trustee's successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

SECTION 6.11. *Appointment of Co-Trustee.* It is the purpose of this Indenture that be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate co-trustee. The following provisions of this Section 6.11 are adopted to these ends.

If the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

SECTION 6.12. *Indemnification; Limited Liability of Trustee.* As provided in the Installment Sale Agreement, the Local Agency shall indemnify the Trustee and its officers, directors, agents and employees, against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or intentional misconduct of the Trustee, its officers, directors, agents or employees. No provision in this Indenture requires the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder if it has reasonable grounds for believing repayment of such funds or adequate indemnity against such liability or risk is not assured to it. The Trustee is not liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Local Agency under this paragraph shall survive the resignation or removal of the Trustee under this Indenture or any defeasance of the Bonds.

SECTION 6.13. *Rights Under Insurance Policy.* So long as the Insurance Policy remains in force and effect, the Trustee shall comply with all of the provisions thereof which are required to be complied with to ensure timely payment of the principal and interest on the Bonds when due. Without limiting the generality of the foregoing sentence, the Trustee shall comply with the following

- (a) If, on the 3rd Business Day preceding any Interest Payment Date, there is not on deposit with the Trustee, after making all transfers and deposits required hereunder, moneys sufficient to pay the principal of and interest on the Bonds coming due on such Interest Payment Date, the Trustee shall give notice to the Bond Insurer and to its designated agent, if any (the "Insurer's Trustee"), by telephone or telecopy, of the amount of such deficiency by 10:00 a.m., New York City time, on such Business Day. If, on the Business Day preceding any Interest Payment Date, there is not on deposit with the Trustee moneys sufficient to pay the principal of and interest on the Bonds due on such Interest Payment Date, the Trustee shall make a claim under the Insurance Policy and give notice to the Bond Insurer and the Insurer's Trustee (if any) by telephone of the amount of any deficiency in the amount available to pay principal and interest, and the allocation of such deficiency between the amount required to pay interest on the Bonds and the amount required to pay principal of the Bonds, confirmed in writing to the Bond Insurer by 10:00 a.m., New York City time, on such Business Day, by delivering a Notice of Nonpayment and Written Certificate.
- (b) For the purposes of the preceding paragraph, the following defined terms have the following respective meanings

"Notice" means telephonic or telecopied notice, subsequently confirmed in a signed writing, or written notice by registered or certified mail, from the Trustee to the Bond Insurer, which notice shall specify (a) the name of the entity making the claim, (b) the policy number, (c) the claimed amount and (d) the date such claimed amount will become Due for Payment.

"Nonpayment" means the failure of the Authority to have provided sufficient funds to the Trustee for payment in full of all principal of and interest on the Bonds that are Due for Payment.

"Due for Payment", when referring to the principal of the Bonds, means when the stated maturity date or mandatory redemption date for the application of a required sinking fund installment has been reached and does not refer to any earlier date on which payment is due by reason of call for redemption (other than by application of required sinking fund installments, acceleration or other advancement of maturity, unless the Bond Insurer elects, in its sole discretion, to pay such principal due upon such acceleration; and when referring to interest on the Bonds, means when the stated date for payment of interest has been reached.

"Written Certificate" means a certificate in form and substance satisfactory to the Bond Insurer as to the Trustee's right to receive payment under the Bond Insurance Policy.

- (c) The Trustee shall cooperate with, and provide all necessary information to, the Bond Insurer and the Insurer's Trustee (if any) as may reasonably be required to facilitate payments made by the Bond Insurer under the Bond Insurance Policy.

ARTICLE VII

MODIFICATION AND AMENDMENT HEREOF

SECTION 7.01. *Amendment Hereof.*

(a) Amendment With Bond Owner Consent. Except as set forth in subsection (b) of this Section 7.01, this Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may only be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consents of the Bond Insurer and the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

(b) Amendment Without Bond Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, with the prior written consent of the Bond Insurer but without the consent of any Bond Owners, to the extent permitted by law but only for any one or more of the following purposes

- (i) to add to the covenants and agreements of the Authority contained in this Indenture, other covenants and agreements hereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or correct any defective provision, contained in this Indenture, or in any other respect whatsoever, as the Authority may deem necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners in the opinion of Bond Counsel filed with the Authority, the Bond Insurer and the Trustee;
- (iii) to modify, amend or supplement the Indenture in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute; or
- (iv) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Bonds under the Tax Code, in the opinion of Bond Counsel filed with the Authority, the Bond Insurer and the Trustee.

(c) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to S&P, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 7.01. In addition, the Authority shall deliver or cause to be delivered to the Bond Insurer a copy of each Supplemental Indenture executed and delivered under this Section 7.01, and any related transcript documents requested by the Bond Insurer.

SECTION 7.02. *Effect of Supplemental Agreement.* From and after the time any Supplemental Indenture becomes effective under this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Outstanding Bonds, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 7.03. *Endorsement or Replacement of Bonds After Amendment.* After the effective date of any action taken as hereinabove provided, the Authority may determine that the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and in that case upon demand of the Owner of any Outstanding Bond at such effective date and presentation of his Bond for that purpose at the Trust Office of the Trustee, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Trust

Office of the Trustee, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Bonds.

SECTION 7.04. *Amendment by Mutual Consent.* The provisions of this Article VII do not prevent any Bond Owner from accepting any amendment as to the particular Bond held by him, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. *Events of Default.* The following events constitute Events of Default

- (a) Default in the due and punctual payment of the principal of any Bond when due, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise.
- (b) Default in the due and punctual payment of any installment of interest on any Bond when due.
- (c) Failure by the Authority to observe and perform any of the covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, other than as referred to in the preceding clauses (a) and (b), for a period of 60 days after written notice, specifying such failure and requesting that it be remedied has been given to the Authority by the Trustee or the Bond Insurer; *provided, however,* that if in the reasonable opinion of the Authority the failure stated in such notice can be corrected, but not within such 60 day period, such failure shall not constitute an Event of Default if corrective action is instituted by the Authority within such 60 day period and diligently pursued until such failure is corrected.
- (d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.
- (e) The occurrence of any event of default under and as defined in the Installment Sale Agreement.

For purposes of determining whether any event of default has occurred under and as described in the preceding clauses (a) or (b), no effect will be given to payments made by the Bond Insurer under the Bond Insurance Policy.

SECTION 8.02. *Remedies Upon Event of Default.* In each and every such case during the occurrence and continuation of an Event of Default, with the prior written consent of the Bond Insurer the Trustee may, and if requested in writing by the Bond Insurer or (with the prior written consent of the Bond Insurer) if requested in writing by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding the Trustee shall, exercise any and all remedies available under law for the equal benefit and protection of all Bond Owners similarly situated.

In addition to whatever remedies the Trustee may have as a result of the occurrence of an Event of Default, the Trustee may enforce any and all remedies granted to it as assignee of the Authority's rights under the Installment Sale Agreement. The Trustee may pursue any available remedy at law or in equity to enforce the payment of the principal of and interest and premium (if any) on the Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default has occurred and is continuing and if requested so to do by the Bond Insurer or (with the prior written consent of the Bond Insurer) by the Owners of a majority in aggregate principal amount of Outstanding Bonds and indemnified as provided in Section 6.02(l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Insurer or the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, to the Bond Insurer or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

SECTION 8.03. *Application of Revenues and Other Funds After Default.* All amounts received by the Trustee under any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, to the payment of any fees, costs and expenses incurred by the Trustee to protect the interests of the Owners of the Bonds; payment of the fees, costs and expenses of the Trustee (including fees and expenses of its counsel, including any allocated costs of internal counsel) incurred in and about the performance of its powers and duties under this Indenture and the payment of all fees, costs and expenses owing to the Trustee under Section 6.03, together with interest on all such amounts advanced by the Trustee at the maximum rate permitted by law;

Second, to the payment of any amounts owed to the Bond Insurer hereunder; and

Third, to the payment of the whole amount then owing and unpaid upon the Bonds for interest and principal, with interest on such overdue

amounts at the respective rates of interest borne by those Bonds, and in case such moneys shall be insufficient to pay in full the whole amount so owing and unpaid upon the Bonds, then to the payment of such interest, principal and interest on overdue amounts without preference or priority among such interest, principal and interest on overdue amounts ratably to the aggregate of such interest, principal and interest on overdue amounts.

SECTION 8.04. *Power of Trustee to Control Proceedings.* If the Trustee, upon the happening of an Event of Default, has taken any action, by judicial proceedings or otherwise, under its duties hereunder, whether upon its own discretion or upon the direction or with the consent of the Bond Insurer, or upon the request of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, it has full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; *provided, however*, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds has the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

SECTION 8.05. *Appointment of Receivers.* Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 8.06. *Non-Waiver.* Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Bond Insurer, the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Bond Insurer, the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Bond Insurer, the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time to time and as often as shall be deemed expedient by the Bond Insurer, the Trustee or the Bond Owners, as the case may be.

SECTION 8.07. *Rights and Remedies of Bond Owners.* No Owner of any Bond issued hereunder has the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner has previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has refused or omitted to comply with such request for a period of 60 days after such written request have been received by, and said tender of indemnity have been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds has any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

SECTION 8.08. *Termination of Proceedings.* If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case, the Authority, the Trustee, the Bond Insurer and the Bond Owners will be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee will continue as if no such proceedings had been taken.

SECTION 8.09. *Rights of Bond Insurer.* Anything in this Indenture to the contrary notwithstanding, upon the occurrence and continuation of an Event of Default, the Bond Insurer shall be entitled to control and direct the enforcement of all rights and remedies granted hereunder to the Bond Owners, or to the Trustee for the benefit of the Bond Owners, including but not limited to rights and remedies granted under Section 8.01 and including but not limited to the right to approve all waivers of any Events of Default. The rights granted to the Bond Insurer hereunder shall be deemed terminated and are not exercisable by the Bond Insurer during any period during which the Bond Insurer is in default under the Bond Insurance Policy.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. *Limited Liability of Authority.* Notwithstanding anything in this Indenture contained, the Authority is not required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues or otherwise from amounts payable under the Installment Sale Agreement). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source which is legally available for such purpose.

The Bonds are revenue bonds, payable exclusively from the Revenues and other funds as provided in this Indenture. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest and premium (if any) on or principal of the Bonds. The Owners of the Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Bonds, and any premiums upon the redemption of any thereof, are not a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

SECTION 9.02. *Benefits of Indenture Limited to Parties.* Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Authority, the Trustee, the Bond Insurer, the Local Agency and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority are for the sole and exclusive benefit of the Trustee, the Bond Insurer, the Local Agency and the Owners of the Bonds.

SECTION 9.03. *Discharge of Indenture.* If the Authority pays and discharges any or all of the Outstanding Bonds in any one or more of the following ways

- (a) by paying or causing to be paid the principal of, and the interest and premium (if any) on, such Bonds when due and payable;
- (b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established with the Trustee under this Indenture, is fully sufficient to pay such Bonds, including all principal, interest and premiums (if any); or
- (c) by irrevocably depositing with the Trustee or any other fiduciary, in trust, Permitted Investments described in clauses (a) through (e) of the definition thereof in such amount as an Independent Accountant shall determine will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established with the Trustee under this Indenture, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption has been mailed under Section 2.03(c) or provision satisfactory to the Trustee has been made for the mailing of such notice, then, at the Request of the Authority, and notwithstanding that any of such Bonds have not been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Any funds held by the Trustee following any payment or discharge of the Outstanding Bonds under this Section 9.03, which are not required for said purposes, shall be paid over to the Authority.

Notwithstanding the foregoing provisions of this Section 9.03, if the principal, interest and premium (if any) on by the Bonds is paid by the Bond Insurer under the Bond Insurance Policy, the obligations of the Trustee and the Authority shall continue in full force and effect and the Bond Insurer shall be fully subrogated to the rights of all Owners of the Bonds so paid. In addition, the obligations of the Trustee and the Authority hereunder, shall continue in full force and effect, and shall not be terminated, until such time as there has paid all amounts (if any) as shall be due and owing to the Bond Insurer under the Bond Insurance Policy; and the Trustee shall not distribute any funds to the Authority under the preceding paragraph unless the Authority has certified to the Trustee that there are no obligations then due and owing by the Authority to the Bond Insurer under the Bond Insurance Policy.

In the case of a defeasance or payment of all of the Outstanding Bonds in accordance with this Section 9.03, all amounts held by the Trustee in any funds or accounts hereunder, which are not required for said purpose or for payment of amounts due the Trustee under Section 6.03, shall be paid over to the Authority.

SECTION 9.04. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture or any Supplemental Indenture the Authority, the Local Agency, the Bond Insurer or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

SECTION 9.05. *Waiver of Personal Liability.* No officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.06. *Execution of Documents by Bond Owners.* Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by their agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 9.06.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Bonds shall be proved by the Registration Books. Any request, consent or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent or vote. In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

SECTION 9.07. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of Authority (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, *provided, however*, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

SECTION 9.08. *Partial Invalidity.* If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 9.09. *Destruction of Canceled Bonds.* Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or canceled under the provisions of this Indenture, at the Request of the Authority the Trustee shall destroy such Bonds as may be allowed by law and in accordance with the Trustee's documentation retention policy in effect at the time.

SECTION 9.10. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance

with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with corporate trust industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the form of multiple funds, accounts or sub-accounts therein.

SECTION 9.11. *Payment on Business Days.* Whenever in this Indenture any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day, provided that interest shall not accrue from and after such day.

SECTION 9.12. *Notices.* Any notice, request, complaint, demand or other communication under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the Bond Insurer or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the Authority: Association of Bay Area Governments
101 Eighth Street
Oakland, California 94607
Attention: Public Finance Director
Fax: (510) 464-8468

If to the Trustee: Wells Fargo Bank, National Association
555 Montgomery Street, 10th Floor
San Francisco, California 94111
Attention: Corporate Trust Services
Fax: (415) 395-9064

If to the Bond Insurer: XL Capital Assurance, Inc.
1221 Avenue of the Americas
New York, NY 10020
Fax: (212) 944-3777
Attention: Surveillance

So long as the Bond Insurance Policy remains in effect, the Trustee shall furnish to the Bond Insurer a copy of any notice required to be given hereunder to the Bond Owners, the Authority or the Local Agency.

SECTION 9.13. *Unclaimed Moneys.* Anything in this Indenture to the contrary notwithstanding, subject to the laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for 2 years after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for 2 years after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall, at the Request of the Authority, be repaid by the Trustee to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged


with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; *provided, however*, that before being required to make any such payment to the Authority, the Trustee shall, at the expense of the Authority, cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than 30 days after the date of mailing of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

SECTION 9.14. *Third-Party Beneficiaries.* The Local Agency and the Bond Insurer shall be deemed to be a third-party beneficiary of this Indenture, with all rights of a third-party beneficiary.

SECTION 9.15. *Governing Law.* This Agreement shall be construed and governed in accordance with the laws of the State.

IN WITNESS WHEREOF, the ASSOCIATION OF BAY AREA GOVERNMENTS has caused this Indenture to be signed in its name by its duly authorized officers and WELLS FARGO BANK, NATIONAL ASSOCIATION, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

ASSOCIATION OF BAY AREA GOVERNMENTS

By  _____
Joseph K. Chan,
Finance Director

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

By _____
Authorized Officer

IN WITNESS WHEREOF, the ASSOCIATION OF BAY AREA GOVERNMENTS has caused this Indenture to be signed in its name by its duly authorized officers and WELLS FARGO BANK, NATIONAL ASSOCIATION, in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

ASSOCIATION OF BAY AREA GOVERNMENTS

By _____
Joseph K. Chan,
Finance Director

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

By  _____
Authorized Officer

APPENDIX A

DEFINITIONS

"Authority" means the Association of Bay Area Governments, a joint powers authority organized and existing under and by virtue of the laws of the State.

"Board" means the Executive Board of the Authority.

"Bond Counsel" means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"Bond Insurance Policy" means the policy of municipal bond insurance which insures the payment when due of principal of and interest on the Bonds.

"Bond Insurer" means XL Capital Assurance Inc., a stock insurance company incorporated under the laws of the State of New York, its successors and assigns, as issuer of the Bond Insurance Policy.

"Bond Law" means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, as amended from time to time.

"Bond Year" means each twelve-month period extending from March 2 in one calendar year to March 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year begins on the Closing Date and ends on March 1, 2007.

"Bonds" means the Bonds designated the "Association of Bay Area Governments 2006 Water and Wastewater Revenue Bonds, Series A" issued hereunder in the aggregate principal amount of \$75,060,000.

"Business Day" means a day of the year, other than a Saturday or Sunday, on which banks are not closed in the city in which the Trust Office of the Trustee is located.

"Capitalized Interest Fund" means the fund established and held by the Trustee under Section 4.04.

"Certificate of the Authority" means a certificate in writing signed by the President, Vice President, Secretary-Treasurer, Finance Director, Public Finance Director or any other person designated as an Authorized Representative of the Authority by a Certificate of the Authority signed by its Secretary-Treasurer and filed with the Trustee.

"Closing Date" means March 2, 2006, being the date of original delivery of the Bonds to Merrill Lynch & Co., as the original purchaser thereof.

"Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Authority or the Local Agency relating to the authorization, issuance, sale and delivery of the Bonds, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee

and its counsel, including the Trustee's first annual administrative fee; Bond Insurance premium, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds.

"Costs of Issuance Fund" means the fund established and held by the Trustee under Section 3.03.

"Depository" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.04.

"Depository System Participant" means any participant in the Depository's book-entry system.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Event of Default" means any of the events described in Section 8.01.

"Excess Investment Earnings" means the amount of excess investment earnings determined to be subject to rebate to the United States of America with respect to the investment of the gross proceeds of the Bonds, determined under Section 148(f) of the Tax Code.

"Fiscal Year" means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

"Indenture" means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

"Independent Accountant" means any certified public accountant or firm of certified public accountants appointed and paid by the Authority, and who, or each of whom (a) is in fact independent and not under domination of the Authority; (b) does not have any substantial interest, direct or indirect, in the Authority; and (c) is not connected with the Authority as an officer or employee of the Authority but who may be regularly retained to make annual or other audits of the books of or reports to the Authority.

"Information Services" means Financial Information, Incorporated's "Daily Called Bond Service," 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Mergent/FIS, Inc., 5250 77 Center Drive, Suite 150, Charlotte, North Carolina 28217, Attention: Municipal News Report; and Kenny S&P, 55 Water Street, 45th Floor, New York, New York 10041, Attention: Notification Department; or, in accordance with then-current guidelines of the Securities and Exchange Commission, such other services providing information with respect to called bonds as the Authority may designate in a Certificate of the Authority delivered to the Trustee.

"Installment Payments" means all payments required to be made by the Local Agency under Section 4.4 of the Installment Sale Agreement.

"Installment Sale Agreement" means the Installment Sale Agreement dated as of March 1, 2006, between the Authority, the Trustee and the Local Agency, as amended from time to time in accordance with its terms.

"Interest Payment Date" means March 1 and September 1 in each year, beginning September 1, 2006, and continuing thereafter so long as any Bonds remain Outstanding.

"Local Agency" means the City of Ukiah, a municipal corporation duly organized and existing under the laws of the State of California.

"Local Agency Project Fund" means the project fund which is established under Section 3.6 of the Installment Sale Agreement.

"Local Agency Reserve Fund" means the reserve fund which is established under Section 4.7 of the Installment Sale Agreement.

"Moody's" means Moody's Investors Service, its successors and assigns.

"Nominee" means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

"Optional Prepayment Revenues" means any amount received by the Trustee upon the optional prepayment of Installment Payments under Section 7.2 of the Installment Sale Agreement, representing a prepayment of the principal amount of such Installment Payments and any prepayment premium thereon.

"Outstanding", when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.07) all Bonds theretofore executed, issued and delivered by the Authority under this Indenture except (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation, (b) Bonds paid or deemed to have been paid within the meaning of Section 9.03, and (c) Bonds in lieu of or in substitution for which other Bonds have been executed, issued and delivered under this Indenture or any Supplemental Indenture.

"Owner", when used with respect to any Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"Permitted Investments" means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America;
- (b) direct obligations of the U.S. Treasury which have been stripped by the U.S. Treasury itself;
- (c) the interest component of Resolution Funding Corp. obligations which have been stripped by request to the Federal Reserve Bank of New York in book entry form;

- (d) pre-refunded municipal bonds rated "Aaa" by Moody's and "AAA" by S&P, except that if the issue is rated by S&P but not by Moody's, then such pre-refunded municipal bonds must have been pre-refunded with cash or Permitted Investments described in the preceding clause (a);
- (e) any of the following direct or indirect obligations of the following agencies of the United States of America and other entities: (i) direct obligations or fully guaranteed certificates of beneficial ownership of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) obligations issued by the Federal Financing Bank; (iv) obligations issued by the Federal Housing Administration; (v) participation certificates issued by the General Services Administration; (vi) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association; and (vii) project notes, local authority bonds or U.S. government guaranteed public housing notes and bonds issued by the United States Department of Housing and Urban Development;
- (f) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by one of the following federal agencies which are not backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): (i) senior debt obligations of the Federal Home Loan Bank System; (ii) participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation; (iii) mortgage-backed securities and senior debt obligations issued by the Federal National Mortgage Association; (iv) senior debt obligations issued by the Student Loan Marketing Association, and (v) consolidated system-wide bonds and notes issued by the Farm Credit System;
- (g) certificates of deposit issued by federal or State chartered savings and loan associations or in federal or State banks (including the Trustee and its affiliates, which are secured at all times by collateral described in the foregoing clauses (a), (e) or (f) of this definition;
- (h) certificates of deposit, savings accounts, deposit accounts or money market deposits with federal or State chartered savings and loan associations or in federal or State banks (including the Trustee and its affiliates), provided that: (i) in the case of a savings and loan association, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such savings and loan association are rated A or better by S&P; and (ii) in the case of a bank, such demand or time deposits are fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such bank (or the unsecured obligations of the parent bank holding company of which such bank is the lead bank) are rated A or better by S&P;
- (i) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the

Federal Securities Act of 1933, and having a rating by S&P of AAAm-G, AAAA-m or AA-m, including such funds for which the Trustee or an affiliate provides investment advice or other services;

- (j) commercial paper rated, at the time of purchase, "Prime-1" by Moody's and "A-1" or better by SP;
- (k) investment agreements, including guaranteed investment contracts, forward purchase agreements and reserve fund put agreements, which are approved by the Bond Insurer;
- (l) bonds or notes issued by a state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such rating agencies;
- (m) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of "Prime-1" or "A3" or better by Moody's and "A-1" or "A" or better by S&P;
- (n) the Local Agency Investment Fund of the State of California, created under Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name; and
- (o) Shares in a California common law trust established pursuant to Title 1, Division 7, Chapter 5 of the California Government Code which invests exclusively in investments permitted by Section 53635 of Title 5, Division 2, Chapter 4 of the California Government Code, as it may be amended, including but not limited to the California Asset Management Program (CAMP).
- (p) other forms of investments approved in writing by the Bond Insurer.

"Record Date" means, with respect to any Interest Payment Date, the 15th calendar day of the month immediately preceding such Interest Payment Date, whether or not such day is a Business Day.

"Redemption Fund" means the fund established and held by the Trustee under Section 4.03.

"Registration Books" means the records maintained by the Trustee under Section 2.07 for the registration and transfer of ownership of the Bonds.

"Request of the Authority" means a request in writing signed by the President, Vice President, Secretary-Treasurer, Finance Director, Public Finance Director or any other person designated as an Authorized Representative of the Authority by a Certificate of the Authority signed by its Secretary-Treasurer and filed with the Trustee.

"Revenue Fund" means the fund by that name established and held by the Trustee under Section 4.02(a).

"Revenues" means (a) all Installment Payments, including but not limited to all Optional Prepayment Revenues and all other payments of principal thereof and interest thereon, and (b) investment income with respect to any moneys held by the Trustee in the funds and accounts established hereunder.

"S&P" means Standard & Poor's Ratings Services, its successors and assigns.

"Securities Depositories" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Written Certificate of the Authority delivered by the Authority to the Trustee.

"State" means the State of California.

"Supplemental Indenture" means any indenture, agreement or other instrument hereafter duly executed by the Authority and the Trustee in accordance with the provisions of Section 7.01.

"Tax Code" means the Internal Revenue Code of 1986, as amended. Any reference to a provision of the Tax Code includes the applicable temporary and permanent regulations promulgated under or with respect to Section 103 and Sections 141 through 150, inclusive, of the Tax Code.

"Term Bonds" means the Bonds maturing on March 1 in each of the years 2030, 2032 and 2036.

"Trust Office" means the corporate trust office of the Trustee in San Francisco, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of this Indenture.

"Trustee" means Wells Fargo Bank, National Association, and its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Article VI.

APPENDIX B

FORM OF BOND

ASSOCIATION OF BAY AREA GOVERNMENTS 2006 Water and Wastewater Revenue Bonds, Series A

RATE OF INTEREST: MATURITY DATE: ORIGINAL ISSUE DATE: CUSIP
% March 1, ____ March 2, 2006

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Revenues and other moneys and securities hereinafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to August 15, 2006, in which event it shall bear interest from the Original Issue Date identified above; *provided, however*, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 in each year, commencing September 1, 2006 (the "Interest Payment Dates") until payment of such Principal Amount in full.

The Principal Amount hereof is payable upon presentation hereof at the principal corporate trust office (the "Trust Office") of Wells Fargo Bank, National Association, as trustee (the "Trustee"), in San Francisco, California. Interest hereon is payable by check or draft of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of the Registered Owner as it appears on the Registration Books of the Trustee as of the fifteenth calendar day of the month preceding such Interest Payment Date; *provided, however*, that at the written request of the Registered Owner of at least \$1,000,000 in aggregate principal amount of outstanding Bonds filed with the Trustee prior to any Record Date, interest on such Bonds shall be paid to such Registered Owner on each succeeding Interest Payment Date by wire transfer of immediately available funds to an account in the United States designated in such written request.

This Bond is one of a duly authorized issue of bonds of the Authority designated the "Association of Bay Area Governments 2006 Water and Wastewater Revenue Bonds, Series A" (the "Bonds"), limited in principal amount to \$75,060,000, secured by an Indenture of Trust dated as of March 1, 2006 (the "Indenture") between the Authority and the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the Revenues (as that term is defined in the Indenture), of the rights, duties and immunities of the Trustee and of the rights and obligations of the Authority thereunder; and all of the terms of the Indenture are hereby incorporated herein and constitute a contract between the Authority and the Registered Owner hereof, and to all of the provisions of which Indenture the Registered Owner hereof, by acceptance hereof, assents and agrees.

The Bonds are authorized to be issued under the provisions of the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Bond Law"). The Bonds are special obligations of the Authority and, as and to the extent set forth in the Indenture, are payable solely from and secured by a first lien and pledge of the Revenues and certain other moneys and securities held by the Trustee as provided in the Indenture. All of the Bonds are equally secured by a pledge of, and charge and lien upon, all of the Revenues and such other moneys and securities, and the Revenues and such other moneys and securities constitute a trust fund for the security and payment of the principal of and interest and premium (if any) on the Bonds. The full faith and credit of the Authority is not pledged for the payment of the principal of or interest or redemption premiums (if any) on the Bonds. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Authority or any of its income or receipts, except the Revenues and such other moneys and securities as provided in the Indenture.

The Bonds have been issued to provide funds to finance the acquisition and construction of public capital improvements relating to the wastewater enterprise of the City of Ukiah in the State of California (the "Local Agency"), all as more particularly described in the Indenture. The installment payments which are required to be made by the Local Agency in respect of the installment sale of such public capital improvements have been assigned to the Trustee under the Indenture, and such amounts constitute the principal source of Revenues which are pledged to the payment of the Bonds.

The Bonds maturing on or before March 1, 2014, are not subject to optional redemption prior to their respective stated maturities. The Bonds maturing on or after March 1, 2015, are subject to optional redemption prior to maturity, at the option of the Authority, in whole or in part among maturities on such basis as designated by the Authority and by lot within a maturity, from any available source of funds, on March 1, 2014, and on any Interest Payment Date thereafter, at a redemption price (expressed as a percentage of the principal amount of Bonds to be redeemed) as set forth in the following table, together with accrued interest thereon to the date fixed for redemption, without premium.

<u>Redemption Dates</u>	<u>Redemption Price</u>
March 1, 2014 and September 1, 2014	101.0%
March 1, 2015 and thereafter	100.0

The Bonds maturing on March 1 in each of the years 2030, 2032 and 2036 are Term Bonds which are subject to mandatory redemption in part by lot, at a redemption

price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on March 1 in the respective years as set forth in the following table; *provided, however*, that if some but not all of the Term Bonds have been redeemed under the foregoing redemption provision, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Term Bonds Maturing March 1, 2030

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2027	\$ 3,100,000
2028	3,240,000
2029	3,390,000
2030 (Maturity)	3,550,000

**Mandatory Sinking Fund Schedule
Term Bonds Maturing March 1, 2032**

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2031	\$ 3,720,000
2032 (Maturity)	3,900,000

**Mandatory Sinking Fund Schedule
Term Bonds Maturing March 1, 2036**

Sinking Fund Redemption Date (March 1)	Principal Amount To Be Redeemed
2033	\$ 4,080,000
2034	4,270,000
2035	4,480,000
2036 (Maturity)	4,690,000

The Trustee on behalf and at the expense of the Authority shall mail (by first class mail) notice of any redemption to the respective owners of any Bonds designated for redemption, at their respective addresses appearing on the registration books maintained by the Trustee, to the Securities Depositories and to one or more Information Services (as those terms are defined in the Indenture), at least 30 but not more than 60 days prior to the redemption; *provided, however*, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest on the Bonds to be redeemed from and after the date fixed for redemption. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the serial numbers of each maturity or maturities (except that in the event of redemption of all of the Bonds of any maturity, the Trustee shall designate such maturity without referencing each individual Bond number) of the

Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Notice of any optional redemption of the Bonds may be rescinded under certain circumstances as set forth in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, Bonds may be exchanged at the Trust Office of the Trustee for a like aggregate principal amount, and maturity of Bonds of other authorized denominations.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee is not affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Trustee for registration of transfer, exchange or payment, and any Bond executed and delivered is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California and by the Bond Law, and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution or statutes of the State of California.

This Bond is not entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon has been manually signed by the Trustee.

IN WITNESS WHEREOF, the Authority has caused this Bond to be executed in its name and on its behalf by the facsimile signatures of its Finance Director and Public Finance Director all as of the Original Issue Date identified above.

ASSOCIATION OF BAY AREA GOVERNMENTS

By _____
Joseph K. Chan,
Finance Director

Attest

Clarke J. Howatt,
Public Finance Director

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture and registered on the Registration Books.

Date: March 2, 2006

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

By _____
Authorized Signatory

STATEMENT OF INSURANCE

XL Capital Assurance Inc. (the "Insurer"), New York, New York, has delivered its municipal bond insurance policy (the "Policy") with respect to the scheduled payments due of principal of and interest on this Bond to Wells Fargo Bank, National Association, Los Angeles, California, or its successor, as trustee (the "Trustee") for the Association of Bay Area Governments 2006 Water and Wastewater Revenue Bonds, Series A. **Said Policy is on file and available for inspection at the principal office of the Trustee and a copy thereof may be obtained from Insurer or the Trustee.**

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby irrevocably constitute(s) _____ and appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT “L”

FINANCING AGREEMENT

This FINANCING AGREEMENT (this "Agreement"), dated as of March 2, 2006, is between the CITY OF UKIAH, a municipal corporation and general law city duly organized and existing under the laws of the State of California (the "City"), and the UKIAH VALLEY SANITATION DISTRICT, a county sanitation district duly organized and existing under the Sanitation District Act of the State of California (the "District").

BACKGROUND:

1. The City owns a wastewater treatment plant and a system for the collection and disposal of wastewater within the City, including sewer mains, laterals and related facilities. The District owns a system for the collection and transmission of wastewater within the District, including sewer mains, laterals and related facilities, and the District system delivers wastewater collected within the service area of the District to the City's wastewater treatment plant for treatment and disposal.
2. The City and the District have previously entered into a Participation Agreement dated July 19, 1995, as amended by Amendment No. 1 and Amendment No. 2, thereto (as so amended, the "Participation Agreement"), under which the City operates and maintains, as a unified system, the wastewater treatment plant, the District's collection and transmission system and the City's system for the collection and disposal of wastewater (the "Wastewater System").
3. Under the Participation Agreement, the costs of improving, operating and maintaining the Wastewater System are apportioned between the City and the District each year in accordance with procedures and methodology set forth therein.
4. The City is proceeding at this time to finance improvements to the wastewater treatment plant (the "Project"), and the District has agreed that it will establish rates and charges for the use of the District's portion of the Wastewater System which are sufficient to enable the District to pay its share of the costs of such improvements as apportioned under the Participation Agreement.
5. In order to provide financing for the Project, the Association of Bay Area Governments (the "Authority") will issue its 2006 Water and Wastewater Revenue Bonds, Series A, in the aggregate principal amount of \$75,060,000 (the "Authority Bonds"), and the Authority and the City will enter into an Installment Sale Agreement dated as of March 1, 2006 (the "Installment Sale Agreement"), under which the City agrees to repay debt service on the Authority Bonds through the payment of semiannual installment payments (the "Installment Payments").
6. The City and the District wish to enter into this Agreement for the purpose of securing the portion of the financing costs which are allocable to the District in accordance with the Participation Agreement, in the same manner in which the City's allocable share of such financing costs is secured under the Installment Sale Agreement.

A G R E E M E N T :

In consideration of the foregoing and the material covenants hereinafter contained, the City and the District formally covenant, agree and bind themselves as follows:

SECTION 1. *Allocable Share of Payments.* A portion of the Installment Payments shall be apportioned to the District under and in accordance with the procedures and methodology set forth in the Participation Agreement. Such portion is herein referred to as the "District Payments."

SECTION 2. *Rates and Charges.* The District will fix, prescribe and revise rates, connection fees and other fees and charges for the services and facilities furnished by the District's portion of the Wastewater System during each fiscal year of the District, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield net revenues (being total revenues less all other costs apportioned to the District under the Participation Agreement for the operation, maintenance and repair of the District's portion of the Wastewater System) which are at least equal to 120% of the aggregate amount of District Payments for such fiscal year. All such revenues will be collected by the City in accordance with the Participation Agreement, and the City will apply such revenues to pay the District Payments on behalf of the District. For purpose of this covenant, transfers from a Rate Stabilization Fund in any fiscal year under Section 3 will be included in the net revenues for such fiscal year.

SECTION 3. *Rate Stabilization Fund.* The District has the right at any time to establish a Rate Stabilization Fund to be held by it or by the City and administered in accordance with this Section 3, for the purpose of stabilizing the rates and charges imposed by the District with respect to the Wastewater System. From time to time the District may deposit amounts in the Rate Stabilization Fund, from any source of legally available funds, as the District may determine.

The District may, but is not be required to, withdraw from any amounts on deposit in the Rate Stabilization Fund and transfer such amounts to the City in any fiscal year for the purpose of paying any portion of the District Payments coming due and payable in such fiscal year. Amounts on deposit in a Rate Stabilization Fund are not pledged to and do not secure the District Payments. All interest or other earnings on deposits in the Rate Stabilization Fund will be retained therein or, at the option of the District, be applied for any other lawful purposes. The District may at any time withdraw any or all amounts on deposit in the Rate Stabilization Fund and apply such amounts for any other lawful purposes of the District.

SECTION 4. *Additional Debt.* The District may not issue or incur any additional bonds or other obligations having any priority in payment out of the revenues levied hereunder over the District Payments, or which are secured on a parity with the District Payments.

SECTION 5. *Participation Agreement to Remain in Effect.* So long as the Authority Bonds remain outstanding, the City and the District shall not cancel the Participation Agreement under Section 7 thereof, or permit the Participation Agreement to terminate in accordance with its terms, unless the District first either (a) enters into an agreement with the Authority containing terms and provisions which are substantially similar to the terms and provisions of the Installment Sale Agreement, or (b) deposits with the City an amount which is sufficient to prepay its allocable share of the Installment Payments as such share is determined in accordance with Section 1.

SECTION 6. *Information to Bond Insurer.* The District shall cooperate with XL Capital Assurance Inc., as insurer of the Authority Bonds (the "Bond Insurer") in all regards as may be required to comply with the terms and provisions of the Bond Insurance Policy relating to the Authority Bonds, and as required to enable the Trustee to receive payments under the Bond Insurance Policy. The District shall provide such information to the Bond Insurer from time to time as the Bond Insurer may reasonably request in writing.

SECTION 7. *Governing Law.* This Agreement is construed in accordance with and governed by the laws of the State of California.


SECTION 8. *Binding Effect.* This Agreement inures to the benefit of and is binding on the Authority, the City, the District, the Bond Insurer and their respective successors and assigns, subject to the limitations contained herein. The Authority and the Bond Insurer are hereby made third party beneficiaries of this Agreement and are entitled to the benefits of this Agreement with the same force and effect as if the Authority and the Bond Insurer were each a party hereto.

IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CITY OF UKIAH

By _____
City Manager

ATTEST:

By _____
City Clerk

UKIAH VALLEY SANITATION DISTRICT

By _____
Chairman

ATTEST:

By _____
Clerk of the Board

SECTION 6. *Information to Bond Insurer.* The District shall cooperate with XL Capital Assurance Inc., as insurer of the Authority Bonds (the "Bond Insurer") in all regards as may be required to comply with the terms and provisions of the Bond Insurance Policy relating to the Authority Bonds, and as required to enable the Trustee to receive payments under the Bond Insurance Policy. The District shall provide such information to the Bond Insurer from time to time as the Bond Insurer may reasonably request in writing.

SECTION 7. *Governing Law.* This Agreement is construed in accordance with and governed by the laws of the State of California.

SECTION 8. *Binding Effect.* This Agreement inures to the benefit of and is binding on the Authority, the City, the District, the Bond Insurer and their respective successors and assigns, subject to the limitations contained herein. The Authority and the Bond Insurer are hereby made third party beneficiaries of this Agreement and are entitled to the benefits of this Agreement with the same force and effect as if the Authority and the Bond Insurer were each a party hereto.

IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CITY OF UKIAH

By _____
Mayor

ATTEST:

By _____
City Clerk

UKIAH VALLEY SANITATION DISTRICT

By  _____
Chairman

ATTEST:

By  _____
Clerk of the Board

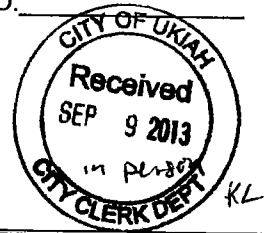
EXHIBIT “M”

File With:
City Clerk
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

CORRECTED**
CLAIM FOR MONEY OR
DAMAGES AGAINST THE
CITY OF UKIAH

RESERVE FOR FILING STAMP

CLAIM NO. _____



A claim must be presented, as prescribed by the Government Code of the State of California, by the claimant or a person acting on his/her behalf and shall show the following:

If additional space is needed to provide your information, please attach sheets, identifying the paragraph(s) being answered.

1. Name and Post Office address of the Claimant:

Name of Claimant: UKIAH VALLEY SANITATION DISTRICT

Post Office Address: See #2

2. Post Office address to which the person presenting the claim desires notices to be sent:

Name of Addressee: Duncan M. James, Attorney at Law

Telephone: (707) 468-9271

Post Office Address: P.O. Box 1381

445 North State Street

Ukiah, CA 95482

3. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

Date of Occurrence: Continuously from 12/14/1966 to present Time of Occurrence: Continuously from
Location: City Hall, Ukiah, California 95482 12/14/1966 to present.

Circumstances giving rise to this claim: See Attachment 3.

4. General description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of the presentation of the claim.

See Attachment 3.

5. The name or names of the public employee or employees causing the injury, damage, or loss, if known.

Unknown

** Claim is being corrected to include complete attachment. Claim submitted on September 6, 2013, was missing Page 14 and 15 by inadvertent mistake.

6. **If amount claimed totals less than \$10,000:** The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

Amount Claimed and basis for computation:

If amount claimed exceeds \$10,000: If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. A limited civil case is one where the recovery sought, exclusive of attorney fees, interest and court costs does not exceed \$25,000. An unlimited civil case is one in which the recovery sought is more than \$25,000. (See CCP § 86.)

☐ Limited Civil Case

☒ Unlimited Civil Case

You are required to provide the information requested above, plus your signature on page 3 of this form, in order to comply with Government Code §910. In addition, in order to conduct a timely investigation and possible resolution of your claim, the city requests that you answer the following questions.

7. Claimant(s) Date(s) of Birth:

N/A

8. Name, address and telephone number of any witnesses to the occurrence or transaction which gave rise to the claim asserted:

All persons with knowledge are unknown to Claimant. Person known to have knowledge include, but are not limited to, the following: Gordon Elton, Jane Chambers, Ted Goforth, Richard Kennedy, Lyle Cash, Tim Eriksen, David Rapport, George Borecky, Robert Pedroncelli, Bill Baird, Candace Horsley, D. Kent Payne, Charles Rough, Kathy McKay, Roy Brosig, Al Kruth, Mike Harris, Charlie Stump, Sage Sangiacomo, and Larry DeKnoblough.

9. If the claim involves medical treatment for a claimed injury, please provide the name, address and telephone number of any doctors or hospitals providing treatment:

N/A

If applicable, please attach any medical bills or reports or similar documents supporting your claim.

10. If the claim relates to an automobile accident:

Claimant(s) Auto Ins. Co.:

Telephone:

Address:

Insurance Policy No.:

Insurance Broker/Agent:

Telephone:

Address:

Claimant's Veh. Lic. No.:

Vehicle Make/Year:

Claimant's Drivers Lic. No.:

Expiration:

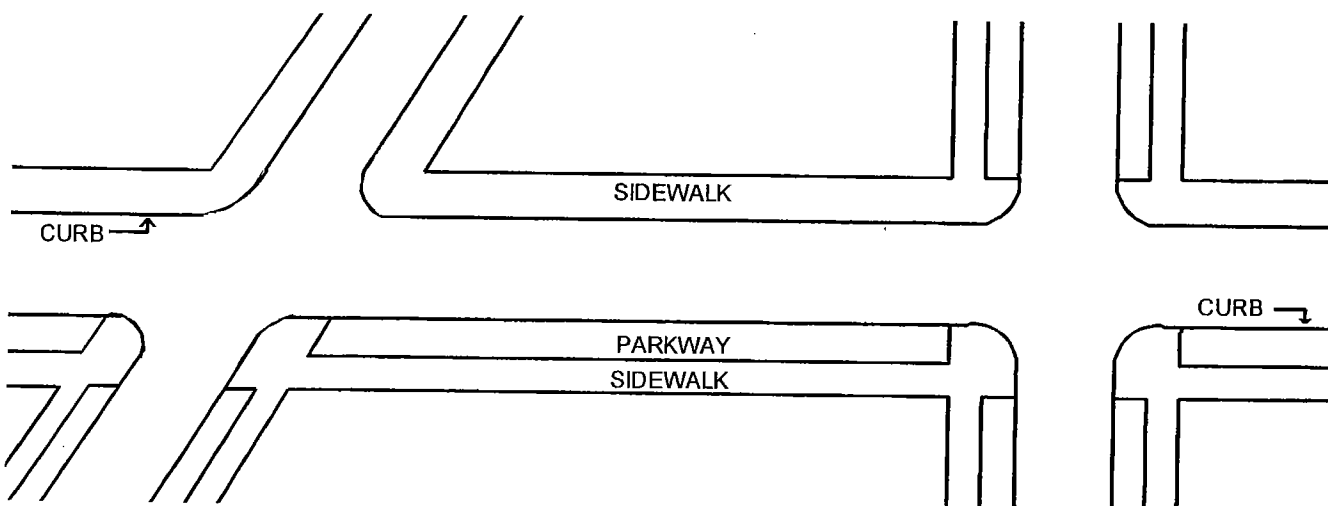
If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

READ CAREFULLY

For all accident claims, place on following diagram name of streets, including North, East, South, and West; indicate place of accident by "X" and by showing house numbers or distances to street corners. If /Agency Vehicle was involved, designate by letter "A" location of /Agency Vehicle when you first saw it, and by "B" location of yourself or your vehicle when you first saw

/Agency Vehicle; location of /Agency vehicle at time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1" and the point of impact by "X."

NOTE: If diagrams below do not fit the situation, attach hereto a proper diagram signed by claimant.



Warning: Presentation of a false claim with the intent to defraud is a felony (Penal Code §72). Pursuant to CCP §1038, the /Agency may seek to recover all costs of defense in the event an action is filed which is later determined not to have been brought in good faith and with reasonable cause.

Signature:

JAMES RONCO

Date: September 9, 2013

1955 AGREEMENT,
as amended in 1958

This claim is submitted to the City of Ukiah (hereinafter CITY) by the Ukiah Valley Sanitation District (hereinafter DISTRICT).

DISTRICT and CITY entered into various agreements and amendments, as further referenced herein, for the sharing of costs associated with the sewer system and waste water treatment.

At all times since CITY and DISTRICT entered into the agreements for the maintenance, expansion, and operation of the treatment plant and trunk sewer in 1955, up to and including the present, CITY has had the sole and exclusive responsibility to act as the paying and receiving agent for DISTRICT and to maintain the books and records of the sewer service units for both DISTRICT and CITY and to accurately calculate the correct CITY-DISTRICT ratio of equivalent sewer service units. The DISTRICT's day-to-day operations, including maintaining the DISTRICT'S books and records, was exclusively done by CITY employees.

At its inception, DISTRICT's Board of Directors had three appointed members two were Mendocino County Supervisors and one Ukiah City Council member (said Board of Directors hereinafter referred to as the "Dependent Board"). This arrangement continued until December, 2008, when an independently elected DISTRICT board (hereinafter referred to as the "Independent Board") replaced the DEPENDENT BOARD.

Even though numerous requests have been made of the CITY to permit DISTRICT the opportunity to inspect the books and records maintained by CITY as paying and receiving agent for DISTRICT and to provide the source documents establishing the method by which CITY calculated the equivalent sewer service units, CITY has failed and refused and continues to fail and refuse to provide any such information to DISTRICT and/or has indicated the materials were

lost or otherwise destroyed, even though CITY maintains said records in its fiduciary capacity and pursuant to the Agreements executed between the parties that are referred to herein. As a result of CITY's failure to permit DISTRICT open and unobstructed access to the books and records maintained by CITY of CITY-DISTRICT revenue and expenses and the supporting data upon which CITY calculates the sewer service units, DISTRICT has been damaged in an amount subject to proof.

Based on, *inter alia*, the allegations set forth herein, CITY owed DISTRICT a fiduciary duty.

On June 29, 1955, the CITY and DISTRICT entered into a written agreement (hereinafter "1955 AGREEMENT") that was amended twice in 1958, as well as in 1966 (hereinafter "1966 AGREEMENT") and 1985 (hereinafter "1985 AGREEMENT"). Paragraph 4 of the 1955 AGREEMENT provided:

"Annual costs for treatment, including maintenance, expansion, and operation of the treatment plant and trunk sewer shall be apportioned between the CITY and the DISTRICT, based upon the proportionate number of sewage connections. Replacement and repair of said treatment plant shall be treated as maintenance and, not capital outlay, and the DISTRICT shall not be charged with costs of amortization of said treatment plant."

On October 20, 1958, the CITY and DISTRICT amended the 1955 AGREEMENT in part by adding:

1. Paragraph 16, which allowed the CITY to charge the DISTRICT 10% of the amount billed for billing and collection services; and,

2. Paragraph 17, which allowed the CITY to charge “the actual cost of any services provided by the City for which a specific fee is not set forth herein or provided for by separate agreement.” (Emphasis added.)

1966 AGREEMENT

On December 14, 1966, the CITY and DISTRICT executed the 1966 AGREEMENT and amended paragraph 4 of the 1955 AGREEMENT and substituted the phrase “projected ratio of CITY-DISTRICT sewer connections for each year of operation from and after January 1, 1967 [...]” (Emphasis added) for “proportionate number of sewer connections” (Emphasis added).

As amended, paragraph 4 read in part as follows:

“4. Annual costs for treatment, including maintenance, expansion, and operation of the treatment plant and trunk sewer shall be apportioned between the CITY and DISTRICT in each year based upon the projected ratio of CITY-DISTRICT sewer connections for each year of operation from and after January 1, 1967 as set forth in the projection prepared by Brown and Caldwell [...]” (Emphasis added.)

The 1966 AGREEMENT added a second paragraph to paragraph 4, which states:

“The parties agree to annually review the actual ratio of sewer connections as compared to the projection, and to adjust the cost apportionment whenever the actual ratio deviates by more than 10% from the projected ratio.”

No annual review ever took place nor was there an annual adjustment to reflect the actual ratio when it deviated more than 10% from the projected ratio, which it did.

Also added by the 1966 AGREEMENT to paragraph 4 was the following:

“Replacement and repair of said treatment plant shall not be treated as capital outlay, and the DISTRICT shall not be charged with amortization of said treatment plant.”

The 1966 AGREEMENT amended paragraph 16 of the 1958 AGREEMENT and increased the amount DISTRICT would pay the CITY to “20% of the amounts billed for sewer service charges.”

From 1958 until 1966, CITY allocated the costs and charged the DISTRICT based on the actual number of ESSU's. From 1967 through 1985, CITY charged the DISTRICT for its annual share of costs based on the “projected ratio,” even though the 1966 AGREEMENT specifically required that CITY “annually review the actual ratio of sewer connections as compared to the projection, and to adjust the cost apportionment whenever the actual ratio deviates by more than 10% from the projected ratio.” (Emphasis added.)

According to documents prepared by CITY, in 1966 the ratio billed DISTRICT was 23.23% which was the same as the actual number of sewer service units in the DISTRICT. In 1967 CITY billed DISTRICT on the projected percentage of 44.15% rather than the actual number of sewer service units in the DISTRICT which was 23.91%.

From 1968 through 1985, CITY billed DISTRICT based on the “projected ratio” rather than the “actual ratio, thereby resulting in an annual overcharge by the CITY to the DISTRICT. For example, by 1982 the “actual ratio” of ESSU'S in the DISTRICT was only 27.90% yet the CITY was still billing the district based on the “projected ratio” for the DISTRICT of 51.34%. The CITY continued to charge the DISTRICT on the basis of 51.34% through 1985.

As a result of the CITY'S failure to bill according to the terms of the 1966 AGREEMENT, the CITY breached the 1966 AGREEMENT and its fiduciary duty to the

DISTRICT. For the time period 1966 through 1985, DISTRICT has been damaged in an amount subject to proof but being in the approximate amount of \$524,971.16 plus prejudgment interest.

1985 AGREEMENT

On February 6, 1985, the CITY and DISTRICT entered into the fourth amendment (1985 AGREEMENT) to the 1955 AGREEMENT. The 1985 AGREEMENT amended paragraph 4 of the 1955 AGREEMENT, as amended by the 1966 AGREEMENT, and deleted the reference to "projected ratio." As amended by the 1985 AGREEMENT, paragraph 4 read as follows:

"4. Annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, and financial services of the entire sewage system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT in each year based upon the ratio of CITY-DISTRICT sewer service units for each year of operation from and after July 1, 1985 [...]."

The second paragraph of paragraph 4 goes on to state:

"Cost apportionment between CITY and DISTRICT as described above shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY-DISTRICT equivalent sewer service units on record as of March 31 each year."

Paragraph 16 of the 1966 AGREEMENT was deleted by the 1985 AGREEMENT, thereby eliminating the CITY's authority to charge DISTRICT an additional sum for billing and collections services.

In addition to the CITY breaching the 1985 AGREEMENT and its fiduciary duty to the DISTRICT by overcharging the DISTRICT based on the ratio of CITY-DISTRICT equivalent

sewer service units, the CITY further breached the 1985 AGREEMENT and its fiduciary duty to the DISTRICT by charging the DISTRICT, in addition to the allocation of costs based on the ratio of CITY-DISTRICT sewer service units, separately for expenses not expressly authorized by the contract, including but not limited operations and maintenance, administration and general expenses, interest, depreciation, general government services and billing and collections. As stated in the 1985 AGREEMENT, "Annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, and financial services of the entire sewerage system (treatment plant, trunk sewer, and collection system) shall be apportioned between CITY and DISTRICT in each year based upon the ratio of CITY-DISTRICT sewer service units for each year of operation from an after July 1, 1985."

As a result of the CITY'S breach of the 1985 AGREEMENT and its fiduciary duty for the time period 1985 through 1995, DISTRICT has been damaged, in addition to the damages DISTRICT has suffered pursuant to the beach of the 1966 AMENDMENT, an approximate additional amount of \$1,423,012.50, plus prejudgment interest.

PARTICIPATION AGREEMENT,
and amendments thereto

On June 10, 1995 the CITY and DISTRICT signed a written document entitled PARTICIPATION AGREEMENT. Paragraph 1 of said agreement provided:

"The annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation." (Emphasis added.)

In addition, the PARTICIPATION AGREEMENT specified in part:

1. "CITY shall be the paying and receiving agent for all DISTRICT operation and maintenance funds" (Paragraph 1);
2. "Cost apportionment between CITY and DISTRICT [...] shall be adjusted annually at the beginning of each fiscal year of operation based upon the ratio of CITY to DISTRICT equivalent sewer service units on record as of March 31 each year" (Paragraph 1, emphasis added);
3. DISTRICT and CITY "shall meet together at such times and places as they shall agree, but in any event at least once a year beginning with the effective date of this Agreement"(Paragraph 6);
4. "DISTRICT will establish such fees and charges as will be sufficient to reimburse CITY for its actual costs of issuance of permits and cost of inspection. CITY shall maintain full and complete accounting records on such services, which will allow the review of such charges not less than once each year so they may at all times reflect such actual costs" (Paragraph 12); and,
5. "CITY will maintain complete records and accounts relating to costs and expenditures made pursuant to or in connection with this Agreement, and of all sewer service revenues which it may have collected (Paragraph 13)."

On March 24, 1999, paragraph 1 of the PARTICIPATION AGREEMENT was amended (AMENDMENT #1), in part, by adding the phrases "repair and replacement" and "debt service" to the "annual costs" to "be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation." AMENDMENT

#1 also amended paragraph 6 of the PARTICIPATION AGREEMENT, as set forth above, and provided in part as follows:

1. DISTRICT and CITY “shall meet together at least once a year, prior to the commencement of the fiscal year (July 1 - June 30) for, among other purposes, approval of the annual budget for the sewer system operations”;
2. “CITY shall prepare the proposed budget for the sewer system which must receive approval from both the City Council and the Ukiah Valley Sanitation District Board of Directors.” (Paragraph 6.1.)

On December 15, 2004, CITY and DISTRICT entered into a second written amendment (AMENDMENT #2) to the PARTICIPATION AGREEMENT which affirmed AMENDMENT # 1 in part as follows:

“On July 19, 1995, the Parties entered an Amendment No. 1 to the Participation Agreement. That agreement affirms that the annual costs for the entire sewer system (treatment plant, trunk sewer and collection system of the City and the District), including maintenance, operation, administration, repair and replacement, upgrading, debt service, insurance and financial services are allocated between the City and the District based upon the ratio of City and District sewer service units for each year of operation.” (Recital, paragraph 2.)

At the time CITY and DISTRICT executed AMENDMENT # 2, they planned to increase the capacity of the waste water treatment plant and upgrade and rehabilitate the sewer system.

AMENDMENT # 2 defined various terms as follows:

1. “Capacity Project” (hereinafter “CAPACITY PROJECT”) as a “project to increase the capacity of the wastewater treatment plant to permit additional

new connections in both the DISTRICT and the CITY [...]" (Recital, paragraph 7);

2. "Upgrade/Rehabilitation Project" (hereinafter "UPGRADE/REHABILITATION PROJECT") as "a project to rehabilitate and upgrade the wastewater treatment plant" (Recital, paragraph 7);
3. The CAPACITY PROJECT and UPGRADE/REHABILITATION PROJECT are collectively defined as "the PROJECT" (Recital, paragraph 7); and
4. "Increased Capacity" (hereinafter "INCREASED CAPACITY") as the "increase the wastewater treatment plant's capacity by an additional 2400 ESSU's [...]" (Recital, paragraph 8).

The allocation of the sewer service units prior to the completion of the PROJECT and of INCREASED CAPACITY after project completion is noted in part as follows:

"1.2 The Increased Capacity. The INCREASED CAPACITY shall be allocated as follows: 65% to the DISTRICT; 35% to the CITY. This allocation of INCREASED CAPACITY shall be subject to the same review and opportunity for adjustment as is provided for the allocation of CAPACITY PROJECT costs under Section 2.1 of this Agreement." (Paragraph 1.2, page 3; emphasis added.)

As to the allocation of costs for the CAPACITY PROJECT, AMENDMENT # 2 states as follows:

"2. **Allocation of the Project Costs.** All of the costs of the PROJECT ("Project Costs"), including, but not limited to, planning, engineering, design, design review, administration, construction, legal and financing (including fees, financial

services, transaction costs and debt service) shall be allocated between the City and the District as follows” (Paragraph 2, page 3, Emphasis added):

2.1. The CAPACITY PROJECT. 35% of the PROJECT COSTS of the CAPACITY PROJECT shall be paid by the CITY and 65% of those PROJECT COSTS shall be paid by the DISTRICT. This allocation of CAPACITY PROJECT costs is based on an estimate of the number of new Sewer service units that will be needed in the CITY and in the DISTRICT Through the year 2020. The allocation of these costs shall be reviewed annually by the Parties TO INSURE that the cost sharing reflects the ACTUAL PROPORTION of new connections in the CITY and the DISTRICT. Each year, commencing twelve months after the completion of the PROJECT, the Parties shall meet to conduct this review, taking into account the number of new service connections within each party during the previous twelve months, the total number of new connections within each party's jurisdiction since the Effective Date, the likely number of new connections in the next one, three and five year time periods, any changes in organization, including annexations or detachments; which may have occurred, and any other facts or conditions the Parties consider relevant. Based upon this review, the Parties may adjust the allocation of these costs between them.” (Paragraph 2.1, page 3, emphasis added.)

Therefore, an annual review of the PROJECT COSTS for the CAPACITY PROJECT and INCREASED CAPACITY is required to insure that the cost sharing reflects the ACTUAL proportion of new connections in the City and the District.

The formula for calculating the PROJECT COSTS for the UPGRADE/REHABILITATION PROJECT are different than for the CAPACITY PROJECT and is based on the PARTICIPATION AGREEMENT. AMENDMENT # 2, section 2.2, provides as follows:

“2.2. The Upgrade/Rehabilitation Project. The PROJECT COSTS of the UPGRADE/REHABILITATION PROJECT shall be allocated between the CITY and the DISTRICT based upon the ratio of CITY and DISTRICT ESSUs [Equivalent Sewer Serviced Units] for each year of operation, commencing in the year when PROJECT COSTS are first incurred, as provided in the PARTICIPATION AGREEMENT. Consistent with the PARTICIPATION AGREEMENT, these allocations shall be calculated each year at the same time and in the same manner as other costs allocated under Section 1 of the PARTICIPATION AGREEMENT.” (Section 2.2, page 3. Emphasis added.)

The PARTICIPATION AGREEMENT does not allow CITY to charge DISTRICT separately for operations and maintenance expenses, administration and general expenses, interest, depreciation, general government services, billing and collections. As stated in the PARTICIPATION AGREEMENT, “The annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) shall be apportioned between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation.” (Paragraph 1). Therefore, the CITY may only charge the DISTRICT “based upon the ratio of CITY to DISTRICT sewer service units for each year of operation.”

The CITY has committed a material breach of the PARTICIPATION AGREEMENT, AMENDMENT # 1 and AMENDMENT # 2, and breached its fiduciary duty to DISTRICT by:

1. Charging the DISTRICT for operations and maintenance expenses, administration and general expenses, interest, depreciation, general government services, billing and collections, in addition to charging the DISTRICT for proportionate share of the annual costs for treatment, including maintenance, operation, expansion, upgrading, administration, insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and collection system) between the CITY and DISTRICT each year based upon the ratio of CITY to DISTRICT sewer service units for each year of operation;
2. Failing to conduct an annual review of the new sewer service units to insure that the cost sharing reflects the ACTUAL proportion of new connections in the CITY and DISTRICT, thereby resulting in a material breach of contract and fiduciary duty by the CITY, which resulted in the DISTRICT paying a substantially greater portion of the PROJECT COSTS for the CAPACITY PROJECT.
3. Failing to conduct an annual review of the sewer service units to insure that the cost sharing reflects the proportion of connections in the CITY and DISTRICT, thereby resulting in a material breach of contract and fiduciary duty by the CITY, which resulted in the DISTRICT paying a substantially greater portion of the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT

As a result of the CITY'S breach of the PARTICIPATION AGREEMENT, AMENDMENT # 1 and AMENDMENT # 2, and its fiduciary duty to DISTRICT for the time period 1995 through the present, DISTRICT has been damaged, in addition to the damages DISTRICT suffered pursuant to the 1966 AGREEMENT and 1985 AGREEMENT, has suffered pursuant to the breach of the 1966 AGREEMENT and 1985 AGREEMENT, an approximate additional amount of \$6,886,979.78, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above, in an amount subject to proof.

In addition, DISTRICT has suffered damaged as a result of unaccounted for income for the time period of 2001 through 2011 in the amount of \$6,341,101.00.

FINANCING AGREEMENT

On or about March 2, 2006, CITY and DISTRICT entered into a written agreement entitled "Financing Agreement" (hereinafter FINANCING AGREEMENT). The "Financing Agreement" was for a \$72,000,000 bond to fund the increase in capacity and upgrade/and rehabilitation of the waste water treatment plant. Pursuant to the FINANCING AGREEMENT:

"A portion of the Installment Payments shall be apportioned to the District under and in accordance with the procedures and methodology set forth in the Participation Agreement. Such portion is herein referred to as the "District Payments." (Section 1.)

Section 2 of the FINANCING AGREEMENT provides in relevant part:

"The DISTRICT will fix, prescribe and revise rates, connection fees and other fees and charges for the services and facilities furnished by the DISTRICT'S

portion of the Wastewater System [...] All such revenues will be collected by the CITY in accordance with the PARTICIPATION AGREEMENT, and the CITY will apply such revenues to pay the DISTRICT Payments on behalf of the DISTRICT.”

The CITY committed a material breach of the FINANCING AGREEMENT and breached its fiduciary duty to DISTRICT by:

1. Failing to apportion to the DISTRICT a portion of the Installment Payments in accordance with the procedures and methodology as set forth in the PARTICIPATION AGREEMENT;
2. Charging the DISTRICT for its share of the CAPACITY PROJECT at the rate of 65% rather than on the basis of the actual proportion of new connections in the CITY and DISTRICT; and,
3. Over-charging the DISTRICT for its share of the Installment Payments for the UPGRADE/REHABILITATION PROJECT.

As a result of the CITY’S breach of the, and its fiduciary duty to DISTRICT, for the time period 2006 through the present, DISTRICT has been damaged an amount, in addition to the damages DISTRICT has suffered pursuant to the beach of the 1966 AGREEMENT AND 1985 AGREEMENT, and the PARTICIPATION AGREEMENT and AMENDMENT # 1 and AMENDMENT # 2, in the approximate amount of \$1,340,677.00, plus prejudgment interest, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above, in an amount subject to proof.

CONCLUSION

As a result of CITY'S breach of contract and breach of their fiduciary duty to DISTRICT, for the time period of 1967 through 2011, DISTRICT has been damaged in the approximate amount of \$15,991,772.28, plus prejudgment interest, exclusive of damages DISTRICT may have suffered as a result of any overcharge to the DISTRICT in relation to the PROJECT COSTS for the UPGRADE / REHABILITATION PROJECT, described above.

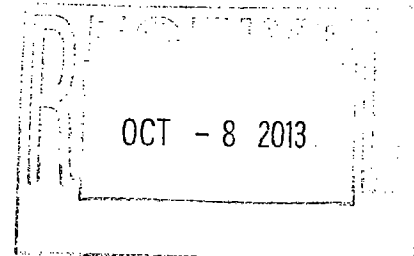
EXHIBIT "N"

City of Ukiah

October 7, 2013

Certified Mail #7011 0470 0003 3786 5570

Ukiah Valley Sanitation District
C/o Mr. Duncan James
P.O. Box 1381
445 N. State Street
Ukiah, CA 95482



Re: Response to the Late Claim Filed with the City of Ukiah on Behalf of Ukiah Valley Sanitation District

Dear Mr. James:

The claim which you presented to the City of Ukiah on September 9, 2013, is the subject of a separate notice denying the claim for breach of contract and breach of fiduciary duty. However, to the extent you contend that the breach of fiduciary constitutes a claim for injury to personal property, it is being returned to you herewith, without any action having been taken by the City of Ukiah.

The portion of the claim based on injury to personal property, if any, is being returned because it was not presented within the time required by law. See California Government Code Sections 901 and 911.2. Your only recourse at this time as to this portion of the claim is to file a written Application for Leave to Present a Late Claim as required by the Government Code. See Section 911.4 and 912.2, inclusive and Section 946.6 of the Government Code. After this Application has been received by the City of Ukiah, it will be reviewed and considered. Under some circumstances, leave to present a late claim will be granted. See Sections 911.4 and 911.6 of the Government Code.

Due to legal time requirements this should be done without delay. To determine if you have a further remedy, or whether further procedures are open to you, you may wish to consult with an attorney of your choosing. If you desire to consult with an attorney, you should do so immediately.

Sincerely,

A handwritten signature in cursive script that reads "Melody Harris". The ink is dark and the signature is fluid.

Melody Harris
Risk Manager

cc: REMIF
Dave Rapport, City Attorney

EXHIBIT "O"

City of Ukiah

NOTICE

TO: Ukiah Valley Sanitation District
c/o Duncan M. James, Attorney at Law
P.O. Box 1381
445 N. State Street
Ukiah, CA 95482

OCT - 8 2013

Notice is hereby given that the communication purporting to be a claim by **UKIAH VALLEY SANITATION DISTRICT ("District")** against this public entity dated September 9, 2013, for breach of contract and breach of fiduciary duty based on an occurrence "continuously from 12/14/1966 to present", and received in this office on September 9, 2013, was rejected as of October 7, 2013, except for the claim for breach of fiduciary duty to the extent the District contends that such claim constitutes a claim for injury to personal property. The City of Ukiah has issued a separate response to the claim for breach of fiduciary duty to the extent that claim constitutes a claim for injury to personal property.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on the denied portion of this claim. See Government Code Section 945.6.

This warning is required by State law. If your claim is governed by federal law, your time to file a court action on such federal claim may be more or less than six months. If a statute of limitations has already run against your federal claim, or will bar action on your federal claim at a time earlier than six (6) months from the date of this notice, this warning will not waive any rights of the City or prevent it from asserting a statute of limitations defense based on such earlier time limitation.

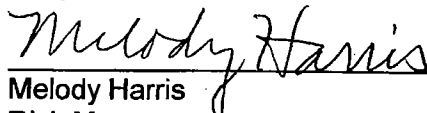
In denying your claim the City does not waive any objections to the timeliness of your claim based on claim filing requirements imposed by state or local law, statutes of limitation, or other defenses in law or equity.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Dated: October 7, 2013

City of Ukiah

By:


Melody Harris
Risk Manager

Certified Mail #7011 0470 0003 3786 5563

C: Dave Rapport, City Attorney

EXHIBIT "P"

Mendocino Local Agency Formation Commission

200 South School Street, Suite F Ukiah, CA 95482
707-463-4470 FAX 707-462-2088

APPLICATION REFERRAL

TO: ☒ County Planning & Building Services ☒ County Executive Office
☒ County Environmental Health Division ☒ County Land Improvement Division
☒ County Surveyor's Office ☒ County Sheriff's Office
☒ County Agricultural Commissioner ☒ Mendocino Council of Governments
☒ California Highway Patrol ☒ County Resource Conservation District
☒ Caltrans, District 1 -- IGR ☒ CAL FIRE -- Mendocino Unit
☒ Ukiah Unified School District ☒ Mendocino Community College District
☒ Calpella County Water District ☒ Redwood Valley County Water District
☒ Ukiah Valley Fire District ☒ Willow County Water District
☒ Ukiah Valley Sanitation District ☒ Millview County Water District
☒ Pinoleville Pomo Nation ☒ Guidiville Band of Pomo Indians
☒ Russian River Flood Control and Water Conservation Improvement District

FROM: George Williamson, Executive Officer

PROJECT: **CITY OF UKIAH SPHERE OF INFLUENCE UPDATE**
(LAFCo File No. S-2013-02)

REFERRAL DATE: October 14, 2014

Proposal: To update the City of Ukiah Sphere of Influence (SOI) by reducing the 1984 SOI from approximately 218 square miles to approximately 7 square miles.

Location: Within and adjacent to the City of Ukiah from Orr Springs Road on the north to just south of Toyon Road on the south.

Attached for your technical review and comment is an application package for the above referenced project along with a proposed Mitigated Negative Declaration. Please submit your project-related comments and/or environmental comments; along with any proposed requirements to the LAFCo office not later than 12:30 PM on **Tuesday, November 13, 2014**. If a response is not received by this date, we will assume you have no comments.

Comments may be e-mailed to eo@mendolafco.org; FAXED to 707-462-2088; or mailed or hand delivered to Mendocino LAFCo, 200 South School Street, Suite F, Ukiah, CA 95482.

Contact me at 707-496-0861 if you have questions or need additional information. Thank you.

COMMENTS:

cc: Charley Stump, City of Ukiah Planning and Community Development Department
Leif Farr, Mendocino County GIS

**Mendocino
Local Agency Formation Commission**

**NOTICE OF
PROPOSED MITIGATED NEGATIVE DECLARATION**

Project Title: City of Ukiah Sphere of Influence Update
(LAFCo File No. S-2013-02 and E-2013-08)

Project Description: To update the City of Ukiah Sphere of Influence (SOI) by reducing the 1984 SOI from approximately 218 square miles to approximately 7 square miles.

Location: Within and adjacent to the City of Ukiah from Orr Springs Road on the north to just south of Toyon Road on the south.

Public Review Period: October 14, through November 13 2014 (30-days)

The Mendocino Local Agency Formation Commission, as Lead Agency, intends to adopt a Mitigated Negative Declaration for the above referenced project. The Initial Study is available for review at the LAFCo office, 200 South School Street, Ukiah CA 95482; or on the LAFCo website at mendolafco.org, click on 'Studies.'

Written comments will be accepted on this proposed Mitigated Negative Declaration until 12:30 PM on **Tuesday, November 13, 2014**. E-mail address: eo@mendolafco.org; FAX number: 707-462-2088; mail and delivery address: 200 South School Street, Ukiah CA 95482. Adoption of the Mitigated Negative Declaration will be considered by the LAFCo Commission in conjunction with the SOI Update at a regular meeting on January 5, 2015.

BY ORDER OF THE MENDOCINO
LOCAL AGENCY FORMATION COMMISSION

GEORGE WILLIAMSON, Executive Officer

Date Posted: October 14, 2014

**Proposed
Mitigated Negative Declaration**

**Initial Study
for the
City of Ukiah Sphere of Influence Update**

Lead Agency:
Mendocino LAFCo
200 South School Street, Suite F
Ukiah, CA 95482

Prepared By:
Uma Hinman
Uma Hinman Consulting

State Clearinghouse No. _____

**Draft Document
October 2014**

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1. Introduction and Project Description

This Project Information, Description, and Environmental Checklist contained herein constitute the contents of an Initial Study in accordance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines:

Project Title	City of Ukiah Sphere of Influence Update
Lead Agency	Mendocino LAFCo
Contact Information	George Williamson AICP, Executive Officer Mendocino LAFCo 200 South School Street, Suite F Ukiah, CA 95482 707-463-4470 eo@mendolafco.org
Project Sponsor's Name and Address	Charley Stump, Director Planning and Community Development Department City of Ukiah 300 Seminary Avenue Ukiah, CA 95482 cstump@cityofukiah.com

Project Location

The City of Ukiah is located along State Highway (SH) 101 between Hopland and Willits in Mendocino County, California, and is the County seat and largest socioeconomic center in the County. (Refer to Figure 1: Vicinity Map) The City's current sphere of influence (SOI) runs from Boonville Road/SH 253 in the south to SH 20 to the north, and ridge-to-ridge east and west. (Refer to Figure 2: Current SOI and 1995 General Plan Proposed SOI). The proposed amendment would reduce the SOI from approximately 218 square miles to an area of approximately seven square miles. This reduced Sphere represents a more logical and manageable planning area for future urban expansion.

General Plan Designation

The City includes lands designated for a full range of residential, commercial, and industrial uses. The area within the City's SOI, outside of City boundaries, is under the jurisdiction of the County of Mendocino and is designated primary for remote residential and agriculture. The area proposed for removal from the City's SOI is primarily designated agricultural in the County's General Plan.

More detailed land use designations were developed for the Ukiah Valley Area Plan (UVAP). The relevant land use designations adjacent to the Ukiah City Limits and in relation to the proposed SOI are shown in Figure 3: Ukiah Area Land Use. The proposed SOI is discussed and recommended in the City's 1995 General Plan, and includes land use designations as described below.

Zoning

The City includes lands zoned for a full range of residential, commercial, and light industrial uses. The area within the City's SOI is under the jurisdiction of the County of Mendocino and is zoned primarily for remote residential (RR). The area proposed for removal from the City's SOI is primarily zoned for agriculture. However, the area within the City's proposed SOI was included within the City's 1995 General Plan and the land use designations are substantially consistent with the current County General Plan and the Ukiah Valley Area Plan (UVAP).

Surrounding Land Uses

Land uses surrounding the City of Ukiah include a mix of residential and commercial uses to the south with large undeveloped properties, some with vineyards to the west of South State Street. To the north is existing residential development with some commercial and light industrial along the west and east sides of SH 101. To the east, the Brush Street Triangle area located west of SH 101 and north of Orr Creek includes undeveloped land, some self-storage facilities, and a few old residences. To the west is a steep forested hillside that has existing limited residential development and limited access.

Agricultural uses within the Ukiah Valley include vineyards and some orchards. Some of these areas are designated as Prime or Unique Farmland. The western hillsides contain forested properties considered forestlands, though they are not zoned as forestlands or commercial timber production zones.

Existing Environmental Setting

The City of Ukiah is located within the Ukiah Valley along SH 101. It is the County seat and largest city in the county. It is the commercial, governmental, and medical center of the Ukiah Valley, which contains over 40,000 people. The population within the City is approximately 16,075, with an additional 6,306 people residing within the proposed SOI¹. The physical features of the Ukiah Valley, such as floodplains, steep hillsides, prime agricultural lands, and unstable geologic conditions, limit the likelihood of Ukiah turning into a sprawling hill-to-hill, developed, urban area (City of Ukiah, 1995 General Plan; Chapter 4 - Land Use, pg 2).

Background and Project Description

Background

In August, 1974, the City of Ukiah adopted a General Plan which included a 'Planning Area' from ridge top to ridge top; and Highway 20 to Burke Hill Road. This Planning Area was designed to "consider the areas surrounding Ukiah that could have an impact on the ultimate development of the City." The Plan went on to say that "The City's Sphere of Influence and staging of development should be developed following the adoption of this Plan..." (Refer to Figure 3).

¹ Data provided by City staff, July 9, 2013.

In late 1974, LAFCo hired the consulting firm of *Wainwright and Ramsey* to prepare an SOI Study for the City and surrounding area. That Study included a recommendation that the City's Sphere coincide with the planning area boundary contained in the newly adopted General Plan.

In January 1975, the City Council discussed the *Wainwright and Ramsey* recommendation for the Sphere and unanimously endorsed its boundaries. In doing so, the Council indicated that the large area was important because of "the relationship with the Sewer District and the Fire District." It also emphasized that "The General Plan indicates the City's position of support of the maintenance of agricultural areas surrounding the City...and the City's views as expressed in the General Plan opposes the conversion of agricultural lands to urban purposes."

In late January 1975, the Mendocino County Planning Commission discussed the *Wainwright and Ramsey* Study and expressed concern over the recommended Sphere boundary indicating that "it extended far beyond practical community service areas and beyond conceivable 20-year population growth areas."

Soon thereafter, LAFCo formally adopted the SOI boundary recommended in the Study and endorsed by the City. According to the 1981 Ukiah General Plan, "The City's specific Sphere of Influence and responsibility for development has been defined by the Mendocino County Local Agency Formation Commission... the Sphere of Influence for the City is the very identifiable geographic unit – it extends from Boonville Road on the south to Highway 20 on the north and from ridge to ridge east to west."

According to the 1984 *Sphere of Influence Study* prepared by William Zion for LAFCo, the adopted Sphere encompassed 218 square miles, with 189 square miles, or 87 percent considered 'hillside.' In December of 1984, LAFCo, relying on the Zion Study reaffirmed the City's valley-wide Sphere of Influence by approving a CEQA Negative Declaration and adopting Resolution No. 84-15 – "Resolution Adopting Spheres of Influence for Cities and Special Districts in Mendocino County."

During the new General Plan revision program from 1991-1995, it was determined that the Sphere of Influence was too large and did not represent the logical area for urban growth over the next 20 years. This General Plan was adopted with a much smaller suggested Sphere, one that in the minds of the City Council and community, represented a more logical and manageable area for future urban expansion. However, it retained the earlier adopted western boundary in an effort to protect the hillside area vistas, sensitive habitats, water quality, and other environmental resources. The City Council also did not adopt recommended Annexation policies, instead choosing to entertain annexation proposals, but not initiating them.

Between 1995 and 2005, the City embarked on a General Plan implementation program, which included periodic joint City Council-Planning Commission meetings to prioritize projects and tasks. Application to LAFCo to amend and reduce the Sphere was not deemed a high priority during this time because no discussions of annexation were occurring and no proposals were filed.

In 2005, an annexation proposal for a portion of the Brush Street Triangle was submitted to the City, but progress was delayed due to ongoing City/County revenue sharing discussions and the absence of a

State mandated Municipal Service Review (MSR) for the City. In 2006-2007, the City Council discussed and confirmed the 1995 General Plan recommended Sphere of Influence, continued with revenue sharing discussions with the County, and continued to work with LAFCo to have the MSR prepared.

In 2009, a second and separate annexation proposal for a different portion of the Brush Street Triangle was submitted, but it was similarly delayed as revenue sharing discussions and the preparation of the MSR continued. In 2012, the MSR for the City of Ukiah was approved by LAFCo, and while the revenue sharing discussions are still ongoing, the City has decided to pursue an SOI Update based on a reduction in the size of its SOI.

Project Description

The proposed SOI (Project) is what is recommended in the 1995 Ukiah General Plan. This proposed SOI was publically discussed and debated over a period of many months during the preparation of the General Plan, and after a number of alternatives were discussed, it was adopted by the City Council.

It is dramatically smaller than the current adopted Sphere. It represents a more logical area in which the City could extend its services, embrace new territory, and anticipate growth over the next 20 years. A considerable amount of the area is already developed with urban land uses and receives urban services from special districts. These areas are located to the north and south of the current City limits. However, there are also vacant lands, particularly to the north that have been proposed for urban development in the past, but remain largely undeveloped. These areas include the Brush Street Triangle, Lover's Lane, and the western portion of the Masonite property. (Refer to Figure 2).

The proposed Sphere of Influence also includes the hillside area west of the City limits to the ridgeline. While some development and urban service capacity in this area are possible, the primary reason for its inclusion in the Sphere is to fulfill General Plan goals and policies to: protect the properties below; protect the sensitive natural hillside resources; and protect hillside aesthetic and visual resources fundamental to Ukiah residents and the tourist industry.

The eastern boundary of the proposed SOI coincides with the current City limit line except in the north where it includes the Brush Street Triangle and the western portion of the Masonite property. This eastern boundary was selected for a number of reasons that included maintaining consistency with the General Plan's goals and policies to protect agricultural lands and avoid further urban development east of SH 101, and to avoid the floodplain of the Russian River.

The southern boundary of the proposed Sphere was selected to capture land that was already developed with urban land uses and received urban services. The area in the extreme southwest corner of the Sphere was selected because it is a hillside area similar to the areas west of the City. The Ukiah City Council discussed the Sphere called for in the General Plan and confirmed it as the desired SOI for the City at this time. On February 20, 2013, the City Council adopted Resolution 2013-05 directing staff to work with LAFCo staff and update the current SOI to be consistent with the 1995 General Plan recommended SOI.

Other Public Agencies Whose Approval is Required

- Mendocino LAFCo
- City of Ukiah

Regulatory Guidance

This document provides justification for a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA). This Mitigated Negative Declaration has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the State CEQA Guidelines 14 California Code Regulations Section 15000 et seq.

An initial study is conducted by the Lead Agency to determine if a project may have a significant effect on the environment. In accordance with the CEQA Guidelines Section 15063, an EIR must be prepared if an initial study indicates that the proposed project under review may have a potentially significant impact on the environment. A Mitigated Negative Declaration may be prepared instead, if the Lead Agency prepares a written statement describing the reasons why the proposed project would not have a significant effect on the environment, and therefore, why it does not require the preparation of an EIR (CEQA Guidelines Section 15371). According to CEQA Guidelines Section 15070, a Negative Declaration shall be prepared for a project subject to CEQA when either:

- a) *The initial study shows there is no substantial evidence, in light of the whole record before the agency, that the proposed project may have a significant effect on the environment, or*
- b) *The initial study identifies potentially significant effects, but:*
 - (1) *Revisions in the project plans or proposals made by or agreed to by the applicant before the proposed negative declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur and;*
 - (2) *There is no substantial evidence, in light of the whole record before the agency, that the proposed project as revised may have a significant effect on the environment.*

If revisions are adopted in the proposed project in accordance with the CEQA Guidelines Section 15070(b), a Mitigated Negative Declaration is prepared.

2. Determination

Environmental Factors Potentially Affected

The environmental factors checked below could be potentially affected by this project; however, with the incorporation of mitigation measures,* potentially significant impacts are reduced to less than significant level by the project" (CEQA Guidelines Section 15382).

- | | | |
|---|---|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agricultural/Forestry Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input type="checkbox"/> Hazards/Hazardous Materials | <input checked="" type="checkbox"/> Hydrology/Water Quality |
| <input type="checkbox"/> Land Use/Planning | <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise |
| <input type="checkbox"/> Population & Housing | <input checked="" type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input checked="" type="checkbox"/> Utilities/Service Systems | <input type="checkbox"/> Mandatory Findings of Significance |

Determination:

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

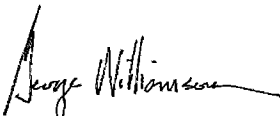
☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that _____ sed project, nothing further is required.

Sign

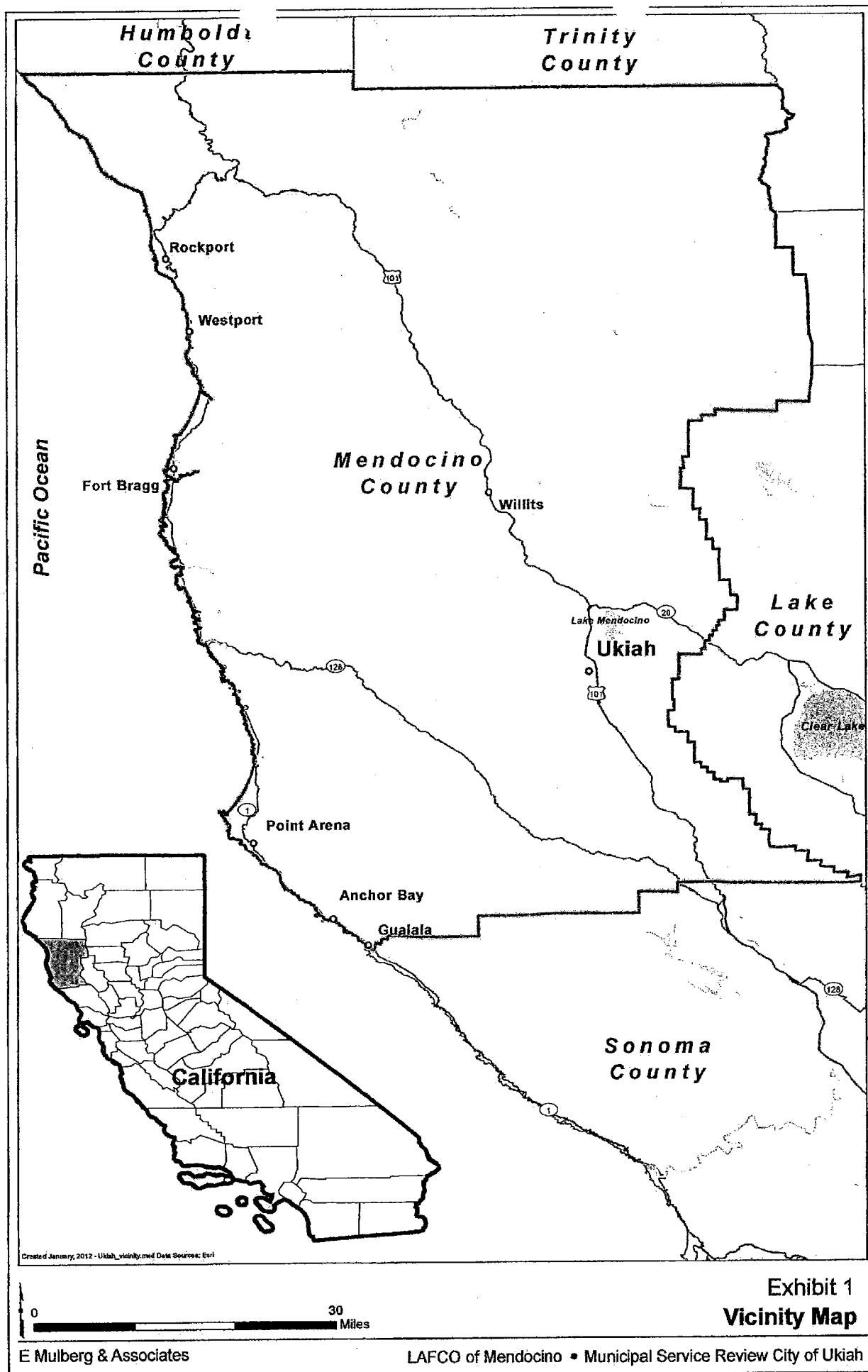


George Williamson AICP, Executive Officer

October 14, 2014




Date

Mendocino LAFCo





City of Ukiah

-  City Limits
-  Current SOI
-  Proposed SOI



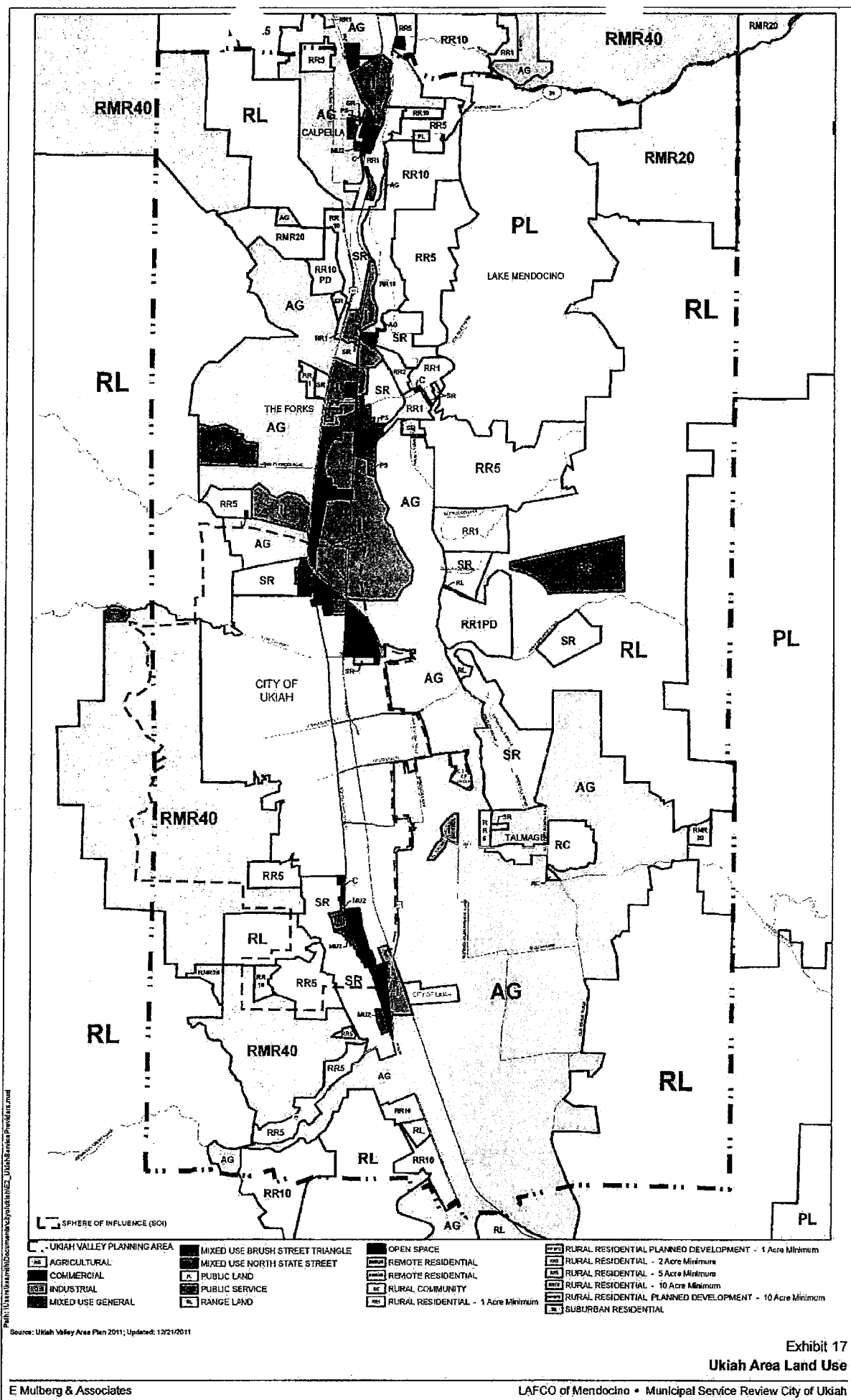


Exhibit 17
Ukiah Area Land Use

Evaluation of Environmental Impacts:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards, (e.g., the project will not expose sensitive receptors to pollutants based on a project-specific screening analysis.)
- 2) All answers must take account of the whole action involved including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063 (c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used: Identify and state where they are available for review.
 - b) Impacts Adequately Addressed: Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures: For effects that are "Less Than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should where appropriate, include a page reference where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) The explanation of each issue should identify:
 - a) The significance criteria or threshold, if any, used to evaluate each question; and
 - b) The mitigation measure identified, if any, to reduce the impact to less than significant.

Mitigation Measure Summary

- MM 9-1** Prior to any future annexation, the City will coordinate with the County of Mendocino to discuss existing storm drainage system and needs in the area, including problem areas, past studies, recommended improvements.
- MM 10-1** The City shall file with LAFCo a written agreement with the County addressing Government Code Section 56425(b). If such an agreement is not forthcoming, the reasons for non-agreement shall be reported by the City to LAFCo.
- MM 14-1:** Consistent with MSR recommendations, the City shall pursue formalizing the functional consolidation of the City of Ukiah Fire Department and the Ukiah Valley Fire District.
- MM 14-2:** Prior to any annexations, the City shall prepare an analysis of Police Department capacity and demand and projected property and sales tax revenue from proposed development(s).
- MM 17-1:** Prior to annexation or development within the City's SOI, the City shall prepare a detailed plan for extending infrastructure and providing service to the subject area.
- MM 17-2:** Prior to any future annexation or development, the City shall coordinate with the relevant district(s) and County to discuss the application and provision of service to the subject area. Topics to be addressed shall include but not be limited the following: most cost effective and efficient way to deliver services, problem areas, improvement needs, and potential financial impacts to the district(s).
- MM 17-3:** Prior to annexation or development within the City's SOI, the City shall prepare a detailed plan describing how wastewater services will be provided to the subject area.

3. Environmental Checklist

1. Aesthetics

Would the project:	Potentially Significant	Less Than Significant with Mitigation	Less Than Significant	No Impact
a) Have a substantial adverse effect on a scenic vista?				X
b) Substantially damage scenic resources within a state scenic highway?				X
c) Substantially degrade the existing visual character or quality of the site/surroundings?				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				X

Discussion

a-d) A Sphere of Influence (SOI) is intended to identify the City's area of probable growth over the next 20 years. However, although the proposed SOI pulls back the sphere from the current SOI boundary, (which currently extends west of the hillside to the section line), the City's proposed SOI includes the western hillside. The purpose of including the western hillside is to retain discretionary review options over development on the hillside in order to protect the significant scenic viewsheds as identified within the City General Plan, as well as to protect the natural hillside resources and properties below these areas that are situated within the current City limits. The City has indicated that the zoning would likely remain the same (RMR-40), but would be subject to development guidelines that would ensure that the scenic quality of the hillside would be preserved. A number of City General Plan and Community Design Element goals and implementation measures address hillside value and development, including the following:

- Goal GP-21: Conserve open space, hillside, stream courses, and indigenous flora and fauna for the enjoyment of future generations.
- Goal OC-10: Conserve the natural woodlands environment of the area hills.
- Implementation Measure OC-10.2(b): Site and design development to minimize impacts on views from the valley.
- Implementation Measure OC-10.2(c): Clearings for roads, building, and fire protection zones shall be sited in the least visible and ecologically damaging locations possible and screened with vegetation where feasible.

The City also has an adopted Hillside Zoning ordinance, which requires discretionary review for development and contains specific design standards to ensure the scenic value of the hillsides are retained (City of Ukiah, 2010). Whereas, Mendocino County Zoning Codes allows for development on the hillside without discretionary review consistent with the RMR-40 zoning district, and allows for single-family residential, agriculture, cemeteries, community recreation, animal sales and service, and forest protection and processing, etc. Further, the Ukiah Valley Area Plan includes Goal CD-2 to protect and enhance the natural beauty and scenic viewsheds of the Ukiah Valley. It should be noted that until annexation, the area within the City's SOI remains under the jurisdiction of the County. However, Policy LU7.1 of the Ukiah Valley Area Plan (UVAP) states that the County and City will coordinate planning within the City's SOI and pursue tax sharing. (Leonard Charles and Associates, 2011)

The recently completed MSR for the City of Ukiah recommends reducing the western SOI boundary even further to exclude the western hillside (Mulberg, 2012). The recommendation was based on the likelihood that the area would not be developed, and even if development occurred, it would not likely require urban services from the City. However, the City indicates the area could receive City wastewater and police services, although fire protection would likely be to continue to be provided by CalFire because of the high severity hazard zone designation. See the Utilities and Public Services section for further discussion on the provision of services within the proposed SOI area.

Because the City has a hillside development ordinance in place, inclusion of the western hillside in the SOI is consistent with LAFCo policy that encourages the preservation of agricultural and open space (Mendocino LAFCo, 2002). By retaining the hillside area within the City's SOI, it will be subject to the City's hillside ordinance and the City will be able to regulate development such that the goals within both the 1995 Ukiah General Plan and Ukiah Valley Area Plan are upheld. Therefore, the project will provide continued protection of identified significant scenic resources in the western hillside. There will be no impact.

Mitigation

None Required.

2. Agricultural and Forestry Resources

Would the project:	Potentially Significant	Less Than Significant with Mitigation	Less Than Significant	No Impact
a) Convert Farmland (Prime, Unique or of Statewide Importance) pursuant to the Farmland Mapping and Monitoring Program of the CA Resources Agency, to non-agricultural use?			X	
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?			X	
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 1220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				X
d) Result in the loss of forestland or conversion of forestland to non-forest use?				X
e) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?			X	

Discussion

a, b, e) Less Than Significant: Areas along western side between the project's proposed SOI and the MSR recommended SOI are primarily agricultural and rural residential. Although they are included in the proposed SOI, the 1995 Ukiah General Plan contains goals and implementation measures to preserve the hillside views in the Ukiah Valley. Refer to Section 1 Aesthetics, for further discussion of General Plan and Community Design goals relating to the scenic value of the hillsides.

A small amount of prime agricultural lands are located in the southwest portion of the proposed SOI and in the Lovers Lane area to the north of the City. This area is also within the existing SOI. The lands are currently under cultivation for vineyards and consist of approximately 150 acres. In the Lovers Lane area the soils meet the State's criteria for Unique Farmland, and a Farmland of Local Importance (Leonard Charles and Associates, 2011). The southwestern portion was included because it falls into the hillside area and will be subject to the hillside development regulations. (Refer to Aesthetics section above for further discussion).

The Lovers Lane parcels are also under Williamson Act. LAFCO policy states that no change of organization shall be approved that would result in the annexation to a city of territory that is subject to a Williamson Act contract. (Mendocino LAFCo, 2002) According to the Ukiah Valley Area Plan (UVAP) the Lovers Lane area is designated for mixed-use development and is specifically recognized that this area would be used for non-agricultural uses and likely to be annexed into the City upon development. (County of Mendocino, 2011) Because of this, the loss of Williamson Act contracts for this area would not be considered a significant impact so long as the proper Non-Renewal process is followed. Future development would not have direct effects on these properties so long as the legal requirements of the contracts are fulfilled (Leonard Charles and Associates, 2011). Under this scenario, annexation proceedings (along with a Tentative Subdivision Map) could be initiated in the seventh or eighth year of the 10-year Non-Renewal phase out period, with construction following expiration of the contract.

The City does have an Agriculture zoning district and it is the City's intent to pre-zone this area as such. Should the City proceed with annexation prior to expiration of the Williamson Act Contract, specific LAFCo determinations would be required in order to allow annexation of land under contract.

Additionally, General Plan Policies are in place to protect and preserve agricultural lands:

- City General Plan Policy OC-18.1: In concert with the County, preserve the economic viability of agricultural lands.
- City General Plan Policy OC-19.1: The large, contiguous areas presently classified for agriculture are to remain classified as agricultural land.

With the reduced SOI as proposed, approximately 7,000 acres of prime and unique farmland will be excluded from the SOI, thereby reducing potential impacts from existing conditions. Impacts will be less than significant.

c, d) No Impact: There are no forestlands located within the proposed SOI; therefore, there will be no impact.

Mitigation

None Required.

3. Air Quality

Would the project:	Potentially Significant	Less Than Significant with Mitigation	Less Than Significant	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?			X	
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			X	
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including emissions that exceed quantitative thresholds for ozone precursors)?			X	
d) Expose sensitive receptors to substantial pollutant concentrations?			X	
e) Create objectionable odors affecting a substantial number of people?			X	

Discussion

a-e) Less Than Significant:

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. Land use designations for the area within the proposed SOI were included in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations identified in the 1995 Ukiah General Plan, and will require additional environmental review as specific projects are proposed.

In June 2010, the Mendocino County Air Quality Management District (MCAQMD) formally recommended that air quality analyses for projects follow the updated Bay Area Air Quality Management District (BAAQMD) *CEQA Air Quality Guidelines*. The MCAQMD further clarified and revised a number of threshold recommendations in October of 2011. Therefore, the thresholds of significance for project analyses are as follows:

Table 3-1 MCAQMD Thresholds of Significance

Pollutant	Threshold of Significance (pounds per day unless otherwise noted)
<i>Construction</i>	
PM ₁₀	82 (exhaust only)
PM _{2.5}	54 (exhaust only)
<i>Operations</i>	
ROG	180
NO _x	42
CO	125 tons per year
PM ₁₀	82
PM _{2.5}	54

Source: City of Ukiah Costco Wholesale Project Draft EIR, January 2013
(<https://cityofukiah.app.box.com/drafteir>)

Mendocino County has been designated as either attainment or unclassified for all national ambient air quality standards under the Federal Clean Air Act. Under state air quality standards, the Air Basin is designated nonattainment for two air quality standards: State PM₁₀ annual average and State PM₁₀ 24-hour average. However, the county has only experienced one day between 2004 and 2007 where State standards were exceeded and the MCAQMD no longer monitors PM₁₀ in Ukiah.

Table 3-2 shows the current attainment status in Mendocino County. As shown, the County is in attainment for all federal criteria air pollutants. (ESA, 2013)

Table 3-2 Mendocino County Attainment Status

Pollutant	Designation/Classification:	
	Federal Standards	State Standards
Ozone – one hour	No Federal Standard ^a	Attainment
Ozone – eight hour	Unclassified/Attainment	Attainment ^b
PM ₁₀	Unclassified ^c	Nonattainment
PM _{2.5}	Unclassified/Attainment	Unclassified
CO	Unclassified/Attainment	Attainment
Nitrogen Dioxide	Unclassified/Attainment	Attainment
Sulfur Dioxide	Unclassified	Attainment
Lead	No Designation	Attainment
Hydrogen Sulfide	No Federal Standard	Unclassified
Sulfates	No Federal Standard	Attainment
Visibility Reducing Particles	No Federal Standard	Unclassified
a. Federal One Hour Zone National Ambient Air Quality Standard was revoked on June 15, 2005. b. The State 8-hour ozone standard was approved by the CARB on April 28, 2005, and became effective May 17, 2006. c. A pollutant is designated unclassified if the data are incomplete and do not support a designation of attainment or nonattainment.		

Source: City of Ukiah Costco Wholesale Project Draft EIR, January 2013
(<https://cityofukiah.app.box.com/drafteir>)

The proposed SOI is a substantial reduction from the current SOI, and will eliminate approximately 135,000 acres, thereby reducing impacts to air quality by identifying a smaller area for potential urban development. The reduced sphere is consistent with the Ukiah 1995 General Plan recommended SOI, and was analyzed in the General Plan EIR, and with General Plan Policy OC-31.1: Concentrate development to encourage mass transit and limit automobile use. Because the SOI will be reduced by approximately 135,000 acres, there will be a reduction in air quality impacts associated with the project and impacts will be less than significant.

Mitigation

None Required.

4. Biological Resources

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?				X
c) Have a substantial adverse effect on protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				X

Discussion

a-f) No Impact:

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

Natural plant communities common to the region include oak woodlands, mixed oak and conifer woodlands, grasslands, chaparral, and riparian woodlands. Agriculture and urban development have modified most of the native habitat in the Ukiah Valley, creating fragmented and isolated habitats along riparian corridors, designated open space, ranches, and parks. Overall, remaining native habitats in the region surrounding the City of Ukiah are found in riparian areas and floodplains as well as native mixed oak and conifer woodlands in the Coast Ranges west of the City. Vegetation communities and wildlife habitats present within Ukiah include urban, ruderal, annual grassland, sporadic stands of oaks, and narrow ribbons of riparian along the larger creeks and the Russian River. (ESA, 2013)

The Russian River is a major waterway and riparian corridor that traverses the Ukiah Valley in a north-south direction. Although it is encompassed by the current SOI, the proposed SOI will pull the sphere boundary back to the City boundary on the east side, thereby eliminating the Russian River corridor from the probable urban boundary. There are, however, a number of small tributaries that drain from the western hillside through the urban area of the City and the proposed SOI.

The Russian River is used by coho salmon, steelhead, and Chinook Salmon, all of which are listed as threatened under the Federal Endangered Species Act (FESA). Coho are also listed as endangered under the California ESA. Although the reduced SOI will exclude the Russian River corridor, a number of tributaries drain through the project area from the western hills above Ukiah, through the City itself. Many of the tributaries (i.e., Orrs, Doolin, Mendocino, and Gibson) have been culverted, boxed, and/or paved over for much of their length. (Leonard Charles and Associates, 2011)

A number of sensitive species are known to occur within the project area per the California Natural Diversity Database: western pond turtle, Burke's goldfields, and Baker's meadowfoam. (ESA, 2013) However, the proposed project does not include ground disturbing activities or approve individual developments which would have the potential to disturb these resources. Individual discretionary developments would be required to obtain entitlement and permits from the City or County, which would be reviewed for impacts to environmental resources. Ministerial development projects (i.e., building permits, agricultural grading, etc.) are subject to zoning codes enforced through the site plan review process.

Within the proposed SOI, there is the potential for new development in undisturbed areas on the valley floor to the west and south of the City. However there are few areas left that have not already been heavily disturbed by agricultural or residential activities. While it is not expected that there are many areas supporting special status plants, it is always possible that future development sites could contain populations of these species. The City has goals, policies and measures in place that address these potential impacts:

- City General Plan Goal OC-3: Encourage clustering of residential development wherever possible to preserve continuous, unfragmented natural habitat.
- City General Plan Goal OC-9: Conserve and enhance channels for creeks and waters flowing through the Planning Area.

- City General Plan Policy OC-9.5: Establish water course protection areas with construction limits to provide protection for riparian vegetation and streambanks.
- City General Plan Goal OC-10: Conserve the natural woodlands environment of the area hills.
- City General Plan Goal OC-11: Conserve coastal oak woodlands in the hills.
- City Zoning Code Section 4090.6(D): Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the watercourse to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the watercourse that is within his or her property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property.
- City Zoning Code Section 9139 (G) Hillside Development Standards: A vegetation report shall include a description of the vegetation environment of the site (species, height, size, general condition, location), conclusions and recommendations regarding the effect of proposed development on the site's vegetation, and opinions and recommendations covering the adequacy of sites to be developed.

The proposed SOI is a substantial reduction from the current SOI, and will eliminate 135,000 acres, thereby reducing impacts to biological resources by identifying a smaller area for potential urban development. The reduced sphere is consistent with the Ukiah 1995 General Plan recommended SOI, and was analyzed in the General Plan EIR. Furthermore, the proposed project does not include ground disturbing activities or approve individual developments which would have the potential to disturb these resources. Individual discretionary developments would be required to obtain entitlement and permits from the City or County, which would be reviewed for impacts to environmental resources. Ministerial development projects (i.e., building permits, agricultural grading, etc.) are subject to zoning codes enforced through the site plan review process. Therefore, there will be no impact.

Mitigation

None Required.

5. Cultural Resources

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in California Code of Regulations, Section 15064.5?				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CA Code of Regulations, §15064.5?				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				X
d) Disturb any human remains, including those interred outside of formal cemeteries?				X

Discussion

a-d) No Impact:

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

Watercourses are particularly sensitive areas for historic and Native American cultural resources. While the existing SOI includes the Russian River corridor in its boundaries, the proposed project eliminates the river corridor from the SOI, thereby reducing potential for impacts from urban development in that area. The streams that traverse the City of Ukiah have been heavily impacted, and in some places encased and covered. Undeveloped areas within the SOI are likely to be annexed into the City upon proposed development. Annexations are subject to CEQA review and typically require site specific cultural resource surveys and inventory.

The City maintains a number of goals, policies, and codes to protect and preserve historic and archaeological resources:

- City General Plan Policy HA-2.2: Support strong and effective historic and scenic preservation.
- City General Plan Goal HA-3: Maintain, protect, and enhance the area's heritage, including and not limited to its cultural, historical, spiritual, social, economic, architectural, agricultural, archaeological, and scenic heritage.
- City Zoning Code Section 9227.1: Historical Building Standards.

The proposed SOI is a substantial reduction from the current SOI, and will eliminate approximately 135,000 acres, thereby reducing potential impacts to cultural resources by identifying a smaller area for future urban development. The reduced sphere is consistent with the Ukiah 1995 General Plan recommended SOI, and was analyzed in the General Plan EIR. Furthermore, the proposed project does not include ground disturbing activities or approve individual developments, which would have the potential to disturb these resources. Individual discretionary developments would be required to obtain entitlement and permits from the City or County, which would be reviewed for impacts to environmental resources. Ministerial development projects (i.e., building permits, agricultural grading, etc.) are subject to zoning codes enforced through the site plan review process. Therefore, there will be no impact.

Mitigation

None Required.

6. Geology and Soils

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i.) Rupture of a known earthquake fault, as delineated on the Alquist-Priolo Earthquake Fault Zoning Map for the area or based on other substantial evidence of a known fault?			X	
ii.) Strong seismic ground shaking?			X	
iii.) Seismic-related ground failure/liquefaction?			X	
iv.) Landslides?			X	
b) Substantial soil erosion or the loss of topsoil?			X	
c) Located on a geologic unit or soil that is unstable, or would become unstable as a result of the project, and potentially result in landslide, lateral spreading, subsidence, liquefaction or collapse?			X	
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?			X	
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?			X	

Discussion

a-e) Less Than Significant:

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

Development within the proposed SOI is subject to seismic safety standards for design and construction of buildings as specified in the Uniform Building Code for Seismic Zone 4. Areas within Zone 4 are those expected to experience maximum magnitudes and damage in the event of an earthquake. (Leonard Charles and Associates, 2011)

The western hillside above Ukiah, which is included within the proposed SOI, was studied in 1991 for landslide potential and related geologic hazards. The mapping and study that was done for the area showed the hillsides having very steep slopes, bedding planes, and weak rock types that would constrain road and home development. (Leonard Charles and Associates, 2011) To minimize impacts related to geologic hazards in the western hills of the SOI area, the City maintains Hillside Development Standards that promote fire and geologic safety and aesthetic qualities. (City of Ukiah, 2010)

The western hillsides are designated for remote residential development (40 acre minimum). Existing development along the lower elevations below the hillside area currently received City wastewater service. It is possible that other development in the hillside area would also receive wastewater service either by pump and haul of individual systems, or by extension of infrastructure.

The proposed SOI is a substantial reduction from the current SOI, and will eliminate approximately 135,000 acres, thereby reducing potential impacts to geology and soils resources by identifying a smaller area for future urban development. The reduced sphere is consistent with the Ukiah 1995 General Plan recommended SOI, and was analyzed in the General Plan EIR. Furthermore, the proposed project does not include ground disturbing activities or approve individual developments which would have the potential to disturb these resources. Individual discretionary developments would be required to obtain entitlement and permits from the City or County, which would be reviewed for impacts to environmental resources. Ministerial development projects (i.e., building permits, agricultural grading, etc.) are subject to zoning codes enforced through the site plan review process. Therefore, impacts will be less than significant.

Mitigation

None Required.

7. Greenhouse Gas Emissions

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Generate greenhouse gas emissions, directly or indirectly, that may have a significant impact on the environment?			X	
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?			X	

Discussion

a–b) Less Than Significant:

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

The recommended thresholds for Greenhouse Gas (GHG) emissions include both a total per-project limit of 1,100 metric tons (MT) of Carbon Dioxide Equivalent (CO₂e) per year, as well as an efficiency-based threshold of 4.6 MT of CO₂e per year per service population (SP). (BAAQMD, 2012) A plan would have a significant impact if it would result in emission of more than 6.6 MT of CO₂e/SP/yr. (BAAQMD, 2012) Service population (SP) is the total of the new residents and employees generated by a particular project. There is currently no formal or historical inventory of GHG emissions for the City, the Ukiah Valley, or Mendocino County. However, the UVAP DEIR estimated that the UVAP area emissions (including the City of Ukiah emissions in 2007 were 353,177 tons of CO₂e.

A global climate change impact is considered significant if it meets the following criteria:

1. Generates GHG emissions, either directly or indirectly, that may have a significant impact on the environment; and
2. Conflicts with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs.

In 2008, a thorough assessment of GHG emissions was prepared for the UVAP Draft EIR, which is now on file with the County of Mendocino. (Leonard Charles and Associates, 2011) Two of the recommendations contained in the UVAP DEIR are directly related to the City, included building code standardization between the City and County, and a solid waste landfill gas recovery project for the City's old landfill. It should be noted that the GHG reductions contained within the UVAP DEIR depend on a uniform building code between the City and County.

Occupancy and use of new residential units and commercial structures would generate GHGs, primarily from the use of motor vehicles. It is not expected that any one new building project would exceed MCAQMD's recommended thresholds for GHG emissions. Any larger project (e.g., a commercial project, a multi-family development, or a subdivision) that might generate emissions exceeding the thresholds would be subject to project-specific CEQA review where project-specific mitigation would be required if the thresholds are exceeded. No additional review or mitigation for such future development would be required as part of this project. (Leonard Charles & Associates, 2013)

At a cumulative level, the emissions from buildout would be expected to exceed the 6.6 MT of CO₂e/SP/yr threshold at the UVAP level. This conclusion is based on the GHG analysis of UVAP plan area buildout emissions done for the UVAP EIR. That EIR concluded that buildout emissions, even including reductions from the specific GHG emission reduction policies added to that plan, would exceed this significant threshold. The UVAP requires the County to prepare a Qualified Greenhouse Gas Reduction and Energy Management Plan. Unless revised by additional analysis done while preparing this plan, the targets will be to reduce emissions 22 percent countywide from today's levels by 2020 and by 83 percent by 2050. (Leonard Charles & Associates, 2013)

Although the City's General Plan and municipal code do not currently include such policies to reduce GHG emissions, it is in the process of preparing a Climate Action Plan (CAP) that will address methods to reduce GHG emissions in the future. The City's Amendment of Water Right Permit 12952 (Application 15704) DEIR, which used the proposed SOI as the Area of Use for that project, determined a significant and unavoidable impact as there were no plan-level mitigation measures feasible for that project. (Leonard Charles & Associates, 2013) The DEIR also stated that future mitigation would occur at the time of the project-specific review for future development applications as well as from recommendations adopted as part of the City's CAP.

The proposed SOI is a substantial reduction from the current SOI, and will eliminate approximately 135,000 acres, thereby reducing impacts related to GHG emissions by identifying a smaller area for potential urban development. The reduced sphere is consistent with the Ukiah 1995 General Plan recommended SOI, and was analyzed in the General Plan EIR, and with General Plan Policy OC-31.1: Concentrate development to encourage mass transit and limit automobile use. Because the SOI will be reduced by approximately 41,000 acres, there will be a reduction in air quality impacts associated with the project and impacts will be less than significant.

Mitigation

None Required.

8. Hazards and Hazardous Materials

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			X	
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?			X	
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?			X	
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?			X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?			X	
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?			X	
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			X	
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?			X	

Discussion

a-h) Less than Significant: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

One site within the Ukiah area is identified on the Department of Toxic Substances Control (DTSC) EnvironStor site. The site, owned and operated by Coast Wood Preserving, is an active wood treatment facility and federal superfund site located about three miles south of Ukiah at Plant Road and Taylor Drive. It is located outside the project area. There are a number of underground storage tank (UST) sites within the project area that have been identified by State and County agencies for cleanup.

The proposed SOI retains the western hillside area, which includes high and very high fire fuel ratings and can have high fire weather severity. (CDF, 2005) However, the zoning will remain consistent with existing zoning which is for rural low-density development (40 acre minimum lot sizes). The impact of development and the potential for wildland fires will be no greater than current conditions, which was analyzed in the City and County's General Plan EIRs, as well as the UVAP EIR.

Through the Redwood Empire Hazardous Incident Team (REHIT), a Joint Powers Agreement (JPA) provides hazardous materials team emergency response throughout the County. This multi-agency response team is capable of handling all levels of hazardous materials incidents on a 24-hour basis, and providing training for local fire departments. Members of REHIT include State-certified hazardous materials specialists and technicians. Other agencies with hazardous materials capabilities include the fire departments of the incorporated cities, the Ukiah Valley and Redwood Valley fire districts, and the California Department of Forestry and Fire Protection. (Refer to Section 14 Public Services for additional discussion). Local law enforcement agencies and the California Highway Patrol can assist in the management of hazardous materials incidents. (Leonard Charles and Associates, 2011)

The Mendocino County Office of Emergency Services (OES) is responsible for disaster planning, assistance, and coordination of all jurisdictions in the Mendocino Operational Area, which encompasses all of Mendocino County. In 2006 the County adopted the Mendocino Operational Area Emergency Operations Plan that describes how various departments and agencies will respond to the range of potential emergencies that might occur in the County. (Leonard Charles and Associates, 2011)

When hazardous materials have previously degraded Mendocino County's environment, it has often been the result of a long-term conditions resulting from the improper use, storage, or disposal of these materials. Many of these past conditions have been identified and mitigated by present local, State, and federal regulations.

As development occurs within the proposed SOI, risks associated with accidental release of hazardous materials increases. However, land use designations will remain the same within the SOI, and potential development impacts have been analyzed on a program level in the City and County General Plan EIRs as well as the UVAP EIR. Policies and ordinances are in place that address hazards and hazardous materials associated with future development. Any development proposals will trigger review of the project and specific site for presence hazardous materials and conditions. Impacts will be less than significant.

Mitigation

None Required.

9. Hydrology and Water Quality

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Violate any water quality standards or waste discharge requirements?			X	
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?			X	
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X	
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?		X		
e) Create or contribute runoff water, which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?		X		
f) Otherwise degrade water quality?			X	
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?			X	
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?			X	

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?			X	
j) Inundation by seiche, tsunami, or mudflow?			X	

Discussion

a-c, f- j) Less than Significant. The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed.

Although the reduced SOI greatly reduces the flood hazard area associated with the Russian River 100-year floodplain and Coyote Dam inundation mapping, a number areas within the proposed SOI would still be affected by shallow flooding: about 50 percent of the North State Street and Masonite area; almost all of the Brush Street Triangle; and eastern Ukiah as far west as Dora Street. (County of Mendocino, 2011)

Policies are set forth in the City's General Plan, Zoning Code, and the 2007 UVAP to minimize potential impacts resulting from erosion, stormwater, flooding, and inundation:

- City General Plan, 1995
 - Policy SF-3.1: Ensure adequate standards for development within the 100-year floodplain.
 - Policy SF-3.2: Avoid development in the Russian River floodway.
 - Policy OC-7.4: Take measures to lessen flooding resulting from stormwater runoff.
 - Policy OC-9.5: Establish water course protection areas with construction limits to provide protection for riparian vegetation and stream banks.
 - Policy OC-13.1: Maintain long-term sustained yield of the Valley's groundwater system shall be the standard for evaluation for groundwater protection programs.
 - Policy OC-14.1: Support actions to retain water in the Ukiah Valley.

- Policy OC-15.1: Protect water quality from adverse impacts of urban and agricultural runoff.
- Policy OC-16.1: Protect surface water supplies from water generated in parking lots.
- Policy OC-16.2: Manage stormwater flows to reduce the hazard of flooding from increased stormwater volumes.
- City Zoning Code
 - Division 9, Chapter 7: Erosion and Sediment Control. Sections 9702 through 9704 describe measures to minimize soil disturbance and sedimentation during construction and maintenance activities.
 - Division 4, Chapter 8: Stormwater Discharges. Sections 4090.01 and 4090.5 prohibit nonstormwater discharges to the storm drain system.
- Ukiah Valley Area Plan, 2007
 - Implementation Measure HS1.2a: Flood hazard mapping.
 - Implementation Measure HS1.2b: Flood Management Plan
 - Implementation Measure HS1.2c: 100-year floodplain development standards and restrictions.

There is adequate policy language in the existing General Plans and Zoning Codes to address water quality and hydrology concerns. Each individual development and/or annexation applications will be reviewed to ensure compliance with these guidelines. The impact is therefore reduced to a less than significant level.

d-e) Less than Significant with Mitigation: The City maintains a system of surface and underground drainage facilities that drain into Orrs Creek, Gibson Creek, Mendocino Creek, and Doolin Creek and eventually to the Russian River. Since there is no central trunk line to collect and convey stormwater to the Russian River, capacity of the stormwater system is unknown. The City has developed a Stormwater Management Plan to reduce the discharge of pollutants from urban runoff into creeks and the Russian River. The plan addresses several areas of concern, public education and outreach, public involvement and participation, illicit discharge detection and elimination, construction site runoff control, postconstruction stormwater management, and pollution prevention. The Public Involvement and Participation Program includes development and implementation of ways to detect and eliminate illicit discharges to the storm sewer system. Construction runoff control could include silt fences and temporary stormwater detention ponds. Post-construction management consists of preventative actions such as protecting sensitive areas (e.g., wetlands) or the use of structural best management practices such as grassed swales or porous pavement. Pollution prevention involves developing and implementing a program for preventing or reducing pollutant runoff from municipal operations. (Mulberg, 2012)

A large portion of the proposed SOI is currently developed and stormwater drainage infrastructure is already in place. Extension of some infrastructure would be required for some of the vacant or underutilized areas including the Bruch Street Triangle (mixed use), western hills (remote residential), Masonite site (industrial), and Lovers Lane area (agricultural). A more detailed plan for extending stormwater infrastructure to those areas would be prepared at time of annexation and/or development.

Mitigation

MM 9-1 Prior to any future annexation, the City will coordinate with the County of Mendocino to discuss existing storm drainage system and needs in the area, including problem areas, past studies, recommended improvements.

10. Land Use and Planning

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Physically divide an established community?				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?				X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?				X

Discussion

a & c) No Impact. LAFCo Policy limits the inclusion of Open Space and agricultural areas within a City's SOI. Because the current SOI in effect includes the majority of the Ukiah Valley, which consists primarily of agricultural designated lands, the exclusion of those areas is consistent with Government Code 56016 of the Cortese-Knox-Hertzburg Act, and Mendocino LAFCo Policy. The City has proposed to keep hillside lands on the western side of the Ukiah Valley within the SOI to ensure that City General Plan Policies regarding scenic vistas and hillside aesthetic qualities are adhered to. The existing UVAP, County, and proposed City land use designations for the hillside areas are consistent: rural residential development (UR-40/RMR-40) with 40-acre minimum lot sizes. There is no habitat conservation plan or natural community conservation plan applicable to the project area.

A number of incorporated islands are located east of the City of Ukiah, between the proposed eastern SOI boundary, which is coterminous with the City's eastern boundary, and the Russian River. The parcels include Riverside Park, the City's wastewater treatment plant, and an expansion parcel adjacent to the plant. The 7 parcels total approximately 95.8 acres, with the following parcels numbers: 180-010-10, 180-010-17, 184-100-11, and 184-100-10, 184-100-09, 184-100-08, and 184-100-07.

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area to be excluded is primarily agricultural lands and rural residential areas. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed. Therefore, there will be no impacts.

- c) **Less Than Significant with Mitigation:** Pursuant to Government Code Section 56425(b), and prior to submitting an SOI Update Application to LAFCo, the City is required to meet with representatives of the County in order to: 1) discuss the proposed new boundaries of the sphere; and 2) explore methods to reach agreement on development standards and planning and zoning requirements within the sphere area to insure that development within the sphere occurs in a manner that reflects the concerns of the City and is accomplished in a manner that promotes the logical and orderly of development of areas within the sphere. Such meetings between the City and the County have taken place and agreement has been reached on Item No. 1. Item No. 2 is still under discussion and no agreement has yet been reached.

Mitigation

- MM 10-1 The City shall file with LAFCo a written agreement with the County addressing Government Code Section 56425(b). If such an agreement is not forthcoming, the reasons for non-agreement shall be reported by the City to LAFCo.

11. Mineral Resources

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				X
b) Result in the loss of availability of a locally-important mineral resource recovery site on a local general plan, specific plan or other land use plan?				X

Discussion

a-b) No Impact: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. There are 28 active gravel extraction permits in the County, 3 of which are in the Ukiah Valley. The three instream and offstream mines are operated by Granite Construction, and are located east of SH 101 along the Russian River. With approval of the proposed SOI, the extraction sites will be located outside of the SOI boundaries. (Leonard Charles & Associates, 2011). There are no mineral resources identified within the project area; therefore, the reduced SOI will not impact mineral resources in the area.

Mitigation

None Required.

12. Noise

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X	
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?			X	
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			X	

Discussion

a-e) Less Than Significant: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan and upon annexation, development will occur consistent with those designations. Future development and/or annexation will require additional environmental review as projects are proposed.

Major sources of noise contributors within the proposed SOI consists of traffic on SH 101 and local roadways, the Ukiah Municipal Airport in the southeast end of the project area, industrial facilities, and agricultural industry equipment in use in the surrounding areas. Development within the proposed SOI is subject to the County of Mendocino noise ordinance, which limits noise based on zoning, time of day, and type of activity. Upon annexation of areas within the SOI, these areas will fall under the City's noise ordinance.

New traffic generated by area buildout traveling on plan area roadways will increase noise along those roadways. Noise modeling was conducted for the Ukiah Valley Area Plan (UVAP) EIR to determine the increased noise that would be generated at buildout. The results of the modeling indicated that the increased traffic along most of the study roadways would not substantially increase average noise levels. Four roadway sections would have average increases of 4 decibels or greater: 1) Lovers Lane (4 decibels); 2) Bush Street from the City Limits to Feed Lot Lane (5 decibels); 3) South Dora Street from Fircrest Drive to Oak Court (6 decibels); and 4) Despina Drive from the City Limits to Lovers Lane (19 decibels). The noise increase for Lovers Lane and Despina Drive would be due to buildout of the Lovers Lane area, while the noise on South Dora Street would come mainly from extension of that corridor to Stipp Lane of Highway 253. It is expected that noise increases over 3 decibels would also occur along some City streets such as South Dora Street. Where there are intervening structures, vegetation, or topography between the roadway and homes or other sensitive receptors, the noise would be reduced. (Leonard Charles and Associates, 2011)

Proposed road extensions included in the Citywide Circulation Study and in the Draft 2007 UVAP could result in increased noise for existing neighborhoods along those extensions as well as along existing streets that access the extensions. Potentially significant noise impacts could occur along the Orchard Avenue extension north of the proposed Hensley Creek Road extension; Brush Street and the residential neighborhood to the south of Orr Creek; Oak Knoll Road and South Dora Street; Redemeyer Road, and Lake Mendocino Drive. (Leonard Charles and Associates, 2011).

Compliance with City and/or County General Plan policies and their accompanying action items, as well as City and County Codes would reduce potential noise impacts by requiring the incorporation of necessary noise-reduction measures in the design and operation of proposed development projects, sufficient to achieve applicable noise standards. Implementation of these policies and actions would help to reduce impacts associated with future growth. Noise-reduction measures typically implemented to reduce traffic noise include increased insulation, setbacks, and construction of sound barriers. Some measures, such as construction of sound barriers, may have secondary impacts related to aesthetics and safety. The feasibility of these measures would be determined on a project-by-project basis, as analyzed in project-specific environmental reviews. (Leonard Charles and Associates, 2011)

Aircraft using the Ukiah Municipal Airport generate noise. The Mendocino County Airport Comprehensive Land Use Plan (CLUP) governs land use around the airport to ensure that the land use is compatible with airplane-generated noise and other airport-related impacts and hazards. The CLUP contains compatibility criteria with respect to noise. Specifically, Policy 3.1.3 states that the maximum Community Noise Equivalent Level (CNEL) considered normally acceptable for residential land uses in the vicinity of the airports covered by the CLUP is 60 dBA. The noise standards applicable to other land uses are contained in the CLUP. Compatibility tables and maps contained within the CLUP identify land use compatibility criteria for Zones A-D. The City of Ukiah Airport Master Plan contains updated noise contours to 2015. (Leonard Charles and Associates, 2011)

There is adequate policy language in the existing General Plans and Zoning Codes to protect existing residents and other noise-sensitive land uses from excessive traffic-generated noise. Each subsequent development application will need to be reviewed to ensure compliance with these guidelines. The impact is reduced to a less than significant level.

f) No Impact: There are no private airstrips in the project area; therefore there will be no impact.

Mitigation

None Required.

13. Population and Housing

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?			X	
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?			X	

Discussion

a) **Less Than Significant:** The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan, which are substantially consistent with the 2007 UVAP. Development and/or annexation within the proposed Sphere will occur consistent with the land use designations identified in the City's General Plan, and will require additional environmental review as projects are proposed. No impacts to population or housing are anticipated with this project.

The City of Ukiah's 1995 General Plan (Ukiah Valley General Plan and Growth Management Program) controls land use within the incorporated City limits. If unincorporated areas within its sphere of influence are annexed to the City, then the City's General Plan would then also become the guiding document for future land use in the annexed areas. The City's plan included land use classifications and policies that would apply to the proposed SOI upon annexation to the City.

Reducing the existing SOI to the proposed boundaries would further concentrate development potential along the State Street corridor between Highway 253 and Lake Mendocino Drive, the Lovers Lane area, and the Brush Street Triangle area – a pattern consistent with the 2007 UVAP and City General Plan. This area is already developed with various residential and non-residential uses. Future development would result in infill of developed areas or northern and southern extensions of greater Ukiah. Further development within the proposed SOI would not divide an existing community. The impact is less than significant, and no mitigation is required.

b-c) Less Than Significant: It is possible that reuse, redevelopment or conversion to other uses of certain properties in the North State Street, the South State Street, Calpella, and the South Ukiah areas will remove or rehabilitate older buildings currently used for housing, and replace that housing with either new or rehabilitated housing, or new non-residential development. Over the long term, population increase and migration combined with changes in land use classifications and opportunities for development will result in considerably more new housing than would be lost by such redevelopment. (Leonard Charles and Associates, 2011)

The Mendocino Council of Governments projects a 2013 housing need of 459 for extremely low to above moderate (City of Ukiah, 2011). This is a decrease of 135 housing units from the 2008 assessment. The availability of vacant and underutilized land within the City consists of 108 acres, including infill parcels, underutilized land, and redevelopment sites (City of Ukiah, 2011). These areas are primarily zoned for mixed uses, which includes residential uses.

The City's 2011 Housing Element policies and actions address this impact and reduce it to a less than significant level. Upon annexation and development proposals, applications should be consistent with policies contained therein in order to maintain affordable housing in the plan area. While many of the housing units identified for redevelopment may be dilapidated and in need of redevelopment, it is important to remember that these often less than desirable units provide a critical housing need in areas where even new "affordable" units are well beyond the resources of many low and very low income households.

Mitigation

None Required.

14. Public Services

Would the project: result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Fire protection?		X		
b) Police protection?		X		
c) Schools?			X	
d) Parks?			X	
e) Other public facilities?			X	

Discussion

The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan. Development and/or annexation within the proposed Sphere will occur consistent with the land use designations set forth in the City's General Plan, and will require additional environmental review as projects are proposed.

a) Less than Significant with Mitigation: The proposed SOI is primarily located within the Ukiah Valley Fire Protection District, with automatic mutual aid from the City of Ukiah and CAL FIRE. The Ukiah Valley Fire District has completed a functional consolidation with the City of Ukiah Fire Department, including an agreement to share personnel, equipment and facilities. The arrangement allows for three-person staffing of engines at the District's North State Street Station and the South State Street Station that would respond to calls from the CAL FIRE dispatch center, which serves both the District and City fire departments. Additionally, the arrangement provides for location of City ambulances at the Ukiah Station at 300 Seminary Avenue.

The Municipal Service Review (MSR) for the Ukiah Valley Special Districts recommends that the District and City work on a formal consolidation that would include a more formal chain of command, common training, and updated equipment. The City maintains 12 apparatus, 10 of which are scheduled for replacement with the next five years. The District has 5 engines, 3 of which are over 15 years old and in need of replacement. In addition, the patrol mini pumper is 22 years old and should also be replaced.

b) Less than Significant with Mitigation: Police service to the proposed SOI is currently provided by both the Mendocino County Sheriff and the City of Ukiah. The City Police Department includes 26 sworn staff for a ratio of 1.63 per 1,000 population, which is comparable to nearby cities of similar size. (Mulberg, 2012) During 2010, they responded to approximately 82 calls for service per day, many of which were outside the City limits and within the proposed SOI. There will be no change in police service if the proposed SOI is approved. City police will continue to respond to calls within the SOI, including the potential annexations areas to the north and south. Upon future proposed annexations, a study will be conducted by the City to determine if the Police Department still has the capacity to serve the new territory. In the case of the predominantly vacant Brush Street Triangle, the study would determine if additional police staff would be needed for future development and if so, how much future property and potential sales tax revenue would be generated to provide funding for that additional capacity.

c) Less than Significant: Public education is provided by the Ukiah Unified School District (UUSD), which includes schools of various grade configurations throughout the City and proposed SOI, as well as the surrounding Ukiah Valley Area. There are currently two high schools – Ukiah High School and the South Valley Continuation School– which serve grades 9 through 12. There are also a number of charter schools in the Ukiah Valley Area.

The City's General Plan contains Policy CF 11.2 which requires consideration of potential impacts on the Ukiah Unified School District (UUSD) during the review of discretionary projects. Further, implementation measures (IM) were included to encourage consideration of school needs during discretionary project review and approval:

- IM CF—11.2(a): The environmental document for all discretionary projects which have the potential to impact the UUSD shall be referred to the District as a Responsible Agency under CEQA for review and comment.
- IM CF-11.2(b): City and County staff will work with District staff to negotiate appropriate mitigation measures for any project which has the potential to significantly negatively impact the District.
- IM CF-11.2(c): Where a project has a significant negative impact on the District's capacity to accommodate the resulting enrollment growth, the City and County will condition project approval subject to agreed mitigation measures between the developer and the District.

Due to these policies and implementation measures already in place, the 135,000 acre reduction in area included within the SOI, and that zoning will remain substantially consistent with that contained within the City's General Plan, County's General Plan, and the UVAP, impacts to schools will be less than significant.

d) Less than Significant: Please see discussion included in Section 15 below. Analysis within the City of Ukiah Municipal Service Review determined that the City has the capacity to serve its residents and the residents of the proposed SOI (Determination 6.6.5). (Mulberg, 2012) Therefore, impacts will be less than significant.

e) Less than Significant: Other facilities have been included in associated sections of this document. However, in general, the 135,000 acre reduction in area included within the SOI, and the fact that zoning will remain substantially consistent with that contained within the City's General Plan, County's General Plan, and the UVAP, impacts to City facilities not already discussed will be thoroughly vetted and analyzed as annexations and developments are proposed. Therefore, impacts associated with the proposed reduction in SOI will be less than significant.

Mitigation

MM 14-1: Consistent with MSR recommendations, the City shall pursue formalizing the functional consolidation of the City of Ukiah Fire Department and the Ukiah Valley Fire District.

MM 14-2: Prior to any annexations, the City shall prepare an analysis of Police Department capacity and demand and projected property and sales tax revenue from proposed development(s).

15. Recreation

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?			X	

Discussion

a-b) Less than Significant: The City of Ukiah has 13 parks totaling 53 acres, which include swimming pools, softball diamonds, picnic tables, and barbecue areas. Other facilities include the 87-acre Ukiah Municipal Golf Course, an 18-hole golf course; the 50-acre Twelfth District Fairgrounds, which includes a driving range, horseshoe pits, racetrack, and arena; the County-operated Low Gap Regional Park (80 acres), located partially within the City; and various school sites are available for public use. (Leonard Charles and Associates, 2011) Additionally, a number of County and Federal recreation areas are located within the Ukiah Valley Area, but outside the proposed SOI, as well as the Russian River which supports recreational activities for area residents. The ratio of City-owned and operated parkland is approximately 8.3 acres of parkland per 1,000 residents (Mulberg, 2012). However, due to proximity of the Low Gap Regional Park to the City, it is heavily used by City residents. For new development, the City requires dedication of 5 acres of parkland per 1,000 residents or fees in lieu of land.

The UVAP's implementation measure LU1.2f specifies that prior to any new discretionary project approvals in the Brush Street Triangle (except for the existing application for an affordable housing project), a specific plan shall be prepared for the Brush Street Triangle to coordinate areawide circulation and infrastructure, preserve open space, provide recreational facilities, and maximize ultimate development potential. Prior to any new discretionary project approvals in the Lovers Lane area, a specific plan shall be prepared for the Lovers Lane area to coordinate areawide circulation and infrastructure, preserve open space, provide recreational facilities, and maximize ultimate development potential. (Leonard Charles and Associates, 2011)

Analysis within the City of Ukiah Municipal Service Review determined that the City has the capacity to serve its residents and the residents of the proposed SOI (Determination 6.6.5). (Mulberg, 2012). Further, the proposed SOI is a substantial reduction from the existing SOI, which is intended to provide a more realistic delineation of probable urban development within the next 20 years. Development within the proposed Sphere will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan, and will require additional environmental review as projects are proposed. Therefore, impacts will be less than significant.

Mitigation

None Required.

16. Traffic and Transportation

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?			X	
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?			X	
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			X	
e) Result in inadequate emergency access?			X	
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities?			X	

Discussion

Proposed road extensions included in the Citywide Circulation Study and in the Draft 2007 UVAP would serve the SOI project area. These include the Orchard Avenue extension as a major arterial north to Ford Road, and subsequent extension parallel to the railroad tracks to Hensley Creek Road; Orr Springs Road Extension to Orchard Avenue (Extension); and Airport Park Boulevard extension as a minor arterial to Plant Road. A new interchange at SR 101 and Bush Street or Ford Road is also contemplated. (City 1995 General Plan; Circulation Element)

a-f) Less than Significant: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The area within the proposed SOI received land use designations in the 1995 Ukiah General Plan, which are substantially consistent with the County General Plan and UVAP. The City's Public Works Department is responsible for maintenance of 53 miles of streets, 75 miles of sidewalks, and eight bridges within the City limits. In 2006, the City had a Citywide Circulation Study prepared for the City and the proposed SOI (study area). The Circulation Study analyzed roadway conditions and needs, intersections, public transportation needs and facilities, bikeways and pedestrian walkways, and truck and bus routes within the study area. Policies regarding maximum levels of service (LOS) for roadway types are consistent between the City's General Plan and Caltrans: LOS "C" for local streets (residential and rural) and LOS "D" for roadway segments classified as arterial, connectors and collectors. (Omni-Means, 2006) The study concluded that 2025 projected conditions of roadway segments within the study area would operate at acceptable LOS "D" or better on a daily basis except for the following areas: East Perkins Street (between Orchard Avenue and SH 101), Airport Park Boulevard (south of Talmage Road), and Talmage Road (SH 101 over-crossing). These areas were identified and ranked for improvements and included in the capital improvement plan. A complete list and ranking of improvement needs can be found in the City's Circulation Study.

The Circulation Study also included an update to the City General Plan's Circulation Element (Chapter VI). Policy 2.2 requires review of impacts of land use proposals on the circulation system, and includes the following Program directives (Omni-Means, 2006):

- Program 2.2.1: Development proposals shall be reviewed according to the provisions of the zoning and subdivision ordinance to ensure that adequate access, on-site circulation, parking and loading areas are provided.
- Program 2.2.2: The City shall require developers to provide mitigations to potential adverse impacts of development on the existing street system. This may include necessary street improvements, traffic signs or signals.
- Program 2.2.3: Roads created in subdividing or land parceling will be designed to tie into existing and anticipated road systems.
- Program 2.2.4: Development review will analyze visibility at intersections.

Development within the proposed Sphere will be 135,000 acres less than the existing SOI and will occur consistent with the land use designations set forth in the 1995 Ukiah General Plan. Annexations and future development will require additional environmental review as projects are proposed. Therefore, impacts associated with the reduced SOI will be less than significant.

Mitigation

None Required.

17. Utilities and Service Systems

Would the project:	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Exceed wastewater treatment requirements of the applicable Water Quality Control Board?			X	
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?			X	
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?		X		
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?			X	
e) Result in a determination by the wastewater treatment provider which serves/may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?		X		
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			X	
g) Comply with federal, state, and local statutes and regulations related to solid waste?			X	

Discussion

a, b, d, f, g) Less than Significant: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The 1995 Ukiah General Plan includes land use designations for the proposed SOI area and are substantially consistent with County General Plan and UVAP designations.

A large portion of the proposed SOI is currently developed and water, wastewater, street, electric utility, and storm drain infrastructure are already in place. Extension of some utility infrastructure would be required for the vacant or underutilized areas, including the Brush Street Triangle (mixed use), western hills (remote residential), Masonite site (industrial), and Lovers Lane area (agricultural). Current provider of water, wastewater and other utilities are identified below:

Service	Current Provider
Water	Millview and Willow County Water Districts
Wastewater	Ukiah Valley Sanitation District
Electricity	PG&E
Natural Gas	PG&E

To adequately analyze potential impacts to the City, County and Districts, a detailed plan for extending infrastructure and providing services to these areas would be prepared at the time of development and/or annexation.

Development within the proposed Sphere will occur consistent with the City's General Plan land use designations, and will require additional environmental review as projects are proposed. With the exclusion of 135,000 acres of area from the existing SOI, and ensuring proposed annexations and development meets the standards and policies of the City's Codes and General Plan, the impacts will be less than significant.

c) Less than Significant with Mitigation: See Section 9 Hydrology and Water Quality.

e) Less than Significant with Mitigation: The City of Ukiah/Ukiah Valley Sanitation District wastewater treatment plant (WWTP) has a finite capacity designed to serve existing developed areas within the City and District, as well as identified but limited in-fill areas for new development. In order for the City to provide wastewater services to areas within the proposed Sphere (and not currently within the Ukiah Valley Sanitation District service area), new wastewater treatment and disposal capacity will be required.

Mitigation

- MM 17-1:** Prior to annexation or development within the City's SOI, the City shall prepare a detailed plan for extending infrastructure and providing service to the subject area.
- MM 17-2:** Prior to any future annexation or development, the City shall coordinate with the relevant district(s) and County to discuss the application and provision of service to the subject area. Topics to be addressed shall include but not be limited the following: most cost effective and efficient way to deliver services, problem areas, improvement needs, and potential financial impacts to the district(s).
- MM 17-3:** Prior to annexation or development within the City's SOI, the City shall prepare a detailed plan describing how wastewater services will be provided to the subject area.

18. Mandatory Findings of Significance

Mandatory Findings of Significance	Potentially Significant	Less Than Significant With Mitigation	Less Than Significant	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X	
b) Does the project have impacts that are individually limited, but cumulatively considerable ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?			X	
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X	

Discussion

a–c) Less than Significant: The proposed SOI is a substantial reduction from the existing SOI, and is intended to provide a more realistic delineation of probable development within the next 20 years. The 1995 Ukiah General Plan includes land use designations for the proposed SOI area and are substantially consistent with County General Plan and UVAP designations. Development within the proposed Sphere will occur consistent with those land use designations, and will require additional environmental review as individual projects are proposed.

With approval of this project, the SOI will be reduced by 135,000 acres to approximately 4,500 acres to the north, south and west of the current City of Ukiah boundaries. The proposed SOI is coterminous with the City's eastern boundary, thereby eliminating the remainder of the Ukiah Valley and eastern foothills.

Because development will occur within the proposed SOI, there is some potential for impacts to the environment and contribution to cumulative impacts within the Ukiah Valley. However, the impacts will be minimized by the reduction in SOI area, and the development of the SOI will be consistent with the current City General Plan, which analyzed development within the Proposed SOI.

In addition, development under the City's land use designations is substantially consistent with the UVAP, which also analyzed potential development in the area. Impacts associated with this project will be less than significant.

Mitigation

None Required.

5. Preparers and References

Report Preparation:

- Uma Hinman, Uma Hinman Consulting
- Bruce Baracco, Former Executive Officer, Mendocino LAFCo

References:

BAAQMD. (2012, May). *CEQA Air Quality Guidelines*. Retrieved September 16, 2013, from Bay Area Air Quality Management District:
http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_Final_May%202012.ashx

CDF. (2005). *Mendocino County Community Wildfire Protection Plan*. Retrieved October 18, 2013, from California Department of Forestry and Fire Protection :
<http://cdfdata.fire.ca.gov/pub/fireplan/fpupload/fpppdf66.pdf>

City of Ukiah. (1995, December 6). *1995 Ukiah General Plan*. Retrieved August 11, 2013, from City of Ukiah: http://cityofukiah.com/pageserver/?page=planning_gen_plan

City of Ukiah. (2010). *Regulations in Hillside District (Article 11)*. Retrieved August 25, 2013, from City of Ukiah Zoning Code: <http://www.codepublishing.com/ca/ukiah/>

City of Ukiah. (2011). *2009-2014 General Plan Housing Element Update*. Ukiah: City of Ukiah.

County of Mendocino. (2011, August). *Ukiah Valley Area Plan*. Retrieved August 25, 2013, from County of Mendocino: <http://www.co.mendocino.ca.us/planning/UVAP.htm>

Environmental Professionals, Association of. 2009. *California Environmental Quality Act: Statutes and Guidelines*. Sacramento, CA.

ESA. (2013, January). *City of Ukiah Costco Wholesale Project DEIR*. Retrieved September 4, 2013, from City of Ukiah: <https://cityofukiah.app.box.com/drafteir>

Leonard Charles & Associates. (2011, May). *Harris Quarry Use Permit and Reclamation Plan: Revised Draft EIR*. Retrieved October 20, 2013, from County of Mendocino : <http://www.co.mendocino.ca.us/planning/HarrisQuarry.htm>

Leonard Charles & Associates. (2013, March). *Water Rights DEIR*. Retrieved September 16, 2013, from City of Ukiah: http://www.cityofukiah.com/pdf/city_hall13/WaterRightsDEIR-DocumentMarch2013.pdf

Leonard Charles and Associates. (2011, January). *Draft 2007 Ukiah Valley Area Plan Draft Environmental Impact Report*. Retrieved August 15, 2013, from County of Mendocino: <http://www.co.mendocino.ca.us/planning/UVAPDEIR.htm>

Mendocino, County of. 2009. *Mendocino County General Plan*. Ukiah, CA.

Mendocino LAFCo. (2002). *Policy and Procedures*. Retrieved August 25, 2013, from Mendocino LAFCo: http://www.mendolafco.org/p_p_chapter_4.pdf

Mulberg, E. (2012, September 4). *Municipal Service City of Ukiah*. Retrieved 25 2013, August, from Mendocino LAFCO: http://www.mendolafco.org/final_msr_text_only_adopted_9-4-12.pdf

Omni-Means. (2006). *Ukiah Citywide Circulation Study*. Ukiah: City of Ukiah.

Public Resources Code, California (as amended). *California Environmental Quality Act. Division 13, §21000 et seq.* Sacramento, CA.

Regulations, Code of (CA) (as amended). *Title 14, Division 6, §15000 et seq. Guidelines for California Environmental Quality Act*. Sacramento, CA.

6. Acronyms and Abbreviations

AG.....	Agriculture
CEQA.....	California Environmental Quality Act
FL.....	Forestland
IS.....	Initial Study
ISO.....	Insurance Service Office, Inc.
JPA.....	Joint Powers Authority
LRA.....	Local Response Area
MSR.....	Municipal Service Review
ND.....	Negative Declaration
OS.....	Open Space
RL.....	Rangeland
RR.....	Remote Residential
SOI.....	Sphere of Influence
SRA.....	State Responsibility Area
TP.....	Timber Production

7. Glossary

Annexation	The inclusion of territory in a city or special district.
Contiguous	In the case of boundary, territory adjacent to an agency to which boundary is proposed. Territory is not contiguous if the only contiguity is based upon a strip of land more than 300 feet long and less than 200 feet wide.
District	An agency of the state, formed in accordance with general law or a special act, for the local performance of governmental functions within limited boundaries. Synonymous with "special district."
General Plan	A document containing a statement of development policies including a diagram and text setting forth the objectives of the plan. The general plan must include certain state mandated elements related to land use, circulation, housing, conservation, open-space, noise, and safety.
Initiating Petition	A document signed either by registered voters or landowners that requests LAFCo to consider a change of organization or reorganization.
Lead Agency	The public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency decides whether an EIR or Negative Declaration is required for a project, and causes the appropriate document to be prepared.
Negative Declaration	A written statement prepared by a Lead Agency that briefly describes the reasons that a project, no exempt from CEQA, will not have a significant effect on the environment and therefore does not require the preparation of an EIR (See CEQA Guidelines Section 15371).
Open Space	Any parcel or area of land or water, which is substantially unimproved and devoted to an open-space use.
Prime Agricultural Land	An area of land, whether a single parcel or contiguous parcels, that has not been developed for a use other than agriculture and meets certain criteria related to soil classification or crop and livestock carrying capacity. Class I and II soils as mapped by the Soil Conservation Service, U.S. Department of Agriculture.
Project	Under CEQA, a project is the whole of an action which has the potential to result in significant environmental change in the environment, directly, or ultimately (see CEQA Guidelines Section 15378).

Responsible Agencies	Under CEQA, responsible agencies are all public agencies other than the Lead Agency that have discretionary approval power over the project.
Service Review	A study and evaluation of municipal services(s) by specific area, sub-region or region culminating in written determinations regarding six specific evaluation categories.
Sphere of Influence	A plan for the probably physical boundaries and service areas of a city or district.
Stakeholder	Refers to LAFCOs, members of the public, affected and interested agencies, and other entities interested in, and affected by, service(s) being reviewed.
Zoning	The primary instrument for implementing the general plan. Zoning divides a community or county into districts or "zones" that specify the permitted/prohibited land uses

EXHIBIT "Q"

Mendocino Local Agency Formation Commission

200 South School Street, Suite F Ukiah, CA 95482

Phone 707-463-4470 Fax 707-462-2088

APPLICATION REFERRAL

REVISED

TO: [X] County Planning & Building Services [X] County Executive Office
[X] County Environmental Health Division [X] County Land Improvement Division
[X] County Surveyor's Office [X] County Sheriff's Office
[X] County Agricultural Commissioner [X] Mendocino Council of Governments
[X] California Highway Patrol [X] County Resource Conservation District
[X] Caltrans, District 1 – IGR [X] CAL FIRE – Mendocino Unit
[X] Ukiah Unified School District [X] Mendocino Community College District
[X] Calpella County Water District [X] Redwood Valley County Water District
[X] Ukiah Valley Fire District [X] Willow County Water District
[X] Ukiah Valley Sanitation District [X] Millview County Water District
[X] Pinoleville Pomo Nation [X] Guidiville Band of Pomo Indians
[X] Russian River Flood Control and Water Conservation Improvement District

FROM: George Williamson, Executive Officer

PROJECT: CITY OF UKIAH SPHERE OF INFLUENCE UPDATE
(LAFCo File No. S-2013-02)

REFERRAL DATE: October 14, 2014

Proposal: To update the City of Ukiah Sphere of Influence (SOI) by reducing the 1984 SOI from approximately 218 square miles to approximately 7 square miles.

Location: Within and adjacent to the City of Ukiah from Orr Springs Road on the north to just south of Toyon Road on the south.

Attached for your technical review and comment is the City of Ukiah application package (*included with this revised transmittal*) for the above referenced project along with a draft Mitigated Negative Declaration (*sent with original referral*). Please submit your project-related comments and/or environmental comments; along with any proposed requirements to the LAFCo office not later than 12:30 PM on **Thursday, November 13, 2014** (*extended so as not to be due on holiday*). If a response is not received by this date, we will assume you have no comments.

Comments may be e-mailed to eo@mendolafco.org; FAXED to 707-462-2088; or mailed or hand delivered to Mendocino LAFCo, 200 South School Street, Suite F, Ukiah, CA 95482. Contact me at 707-496-0861 if you have questions or need additional information. Thank you.

COMMENTS:

cc: Charley Stump, City of Ukiah Planning and Community Development Department
Leif Farr, Mendocino County GIS



2014 Sphere of Influence Update Local Agency Formation Commission

Introduction

In September, 2012, the LAFCO approved the City of Ukiah Municipal Service Review (MSR). The MSR included the City's proposed new Sphere of Influence as suggested in its 1995 updated General Plan. The proposed new Sphere is drastically smaller than the current adopted Sphere because the citizens who worked on the 1995 General Plan, along with the City Planning Commission and City Council felt a reduced Sphere made logical sense and depicted an area that could eventually become a part of the City.

This Sphere of Influence Update information includes background information, a description of the proposed Sphere, a comparison of the current and proposed Sphere, a discussion of the proposed western Sphere boundary, and a plan for services (water, wastewater, police service, fire protection, and storm water management) in the proposed SOI.

Background

In August, 1974, the City of Ukiah adopted a new General Plan which included a "Planning Area" from ridge top to ridge top and Highway 20 to Burke Hill Road to "consider the areas surrounding Ukiah that would have an impact on the ultimate development of the City." The Plan went on to say that "The City's Sphere of Influence and staging of development should be developed following the adoption of this Plan..."

In late 1974, LAFCO hired the consulting firm of *Wainwright and Ramsey* to prepare a Sphere of Influence Study for the City and surrounding area. That Study included a recommendation that the City's Sphere coincide with the planning area boundary contained in the newly adopted General Plan.

In January 1975, the City Council discussed the *Wainwright and Ramsey* recommendation for the Sphere and unanimously endorsed its boundaries. In doing so, the Council indicated that the large area was important because of "the relationship with the Sewer District and the Fire District." It also emphasized that "The General Plan indicates the City's position of support of the maintenance of agricultural areas surrounding the City.....and that the City's views as expressed in the General Plan opposes the conversion of agricultural lands to urban purposes."

In late January 1975, the Mendocino County Planning Commission discussed the *Wainwright and Ramsey* Study and expressed concern over the recommended Sphere boundary indicating that "it extended far beyond practical community service areas and beyond conceivable 20-year population growth areas."

Soon thereafter LAFCO formally adopted the Sphere of Influence boundary recommended in the Study and endorsed by the City. According to the 1981 Ukiah General Plan, "The City's specific Sphere of Influence and responsibility for development has been defined by the Mendocino County Local Agency Formation Commission....the Sphere of Influence for the City is the very identifiable geographic unit – it extends from Boonville Road on the south to Highway 20 on the north and from ridge to ridge east to west." "

**UKIAH,
CALIFORNIA**

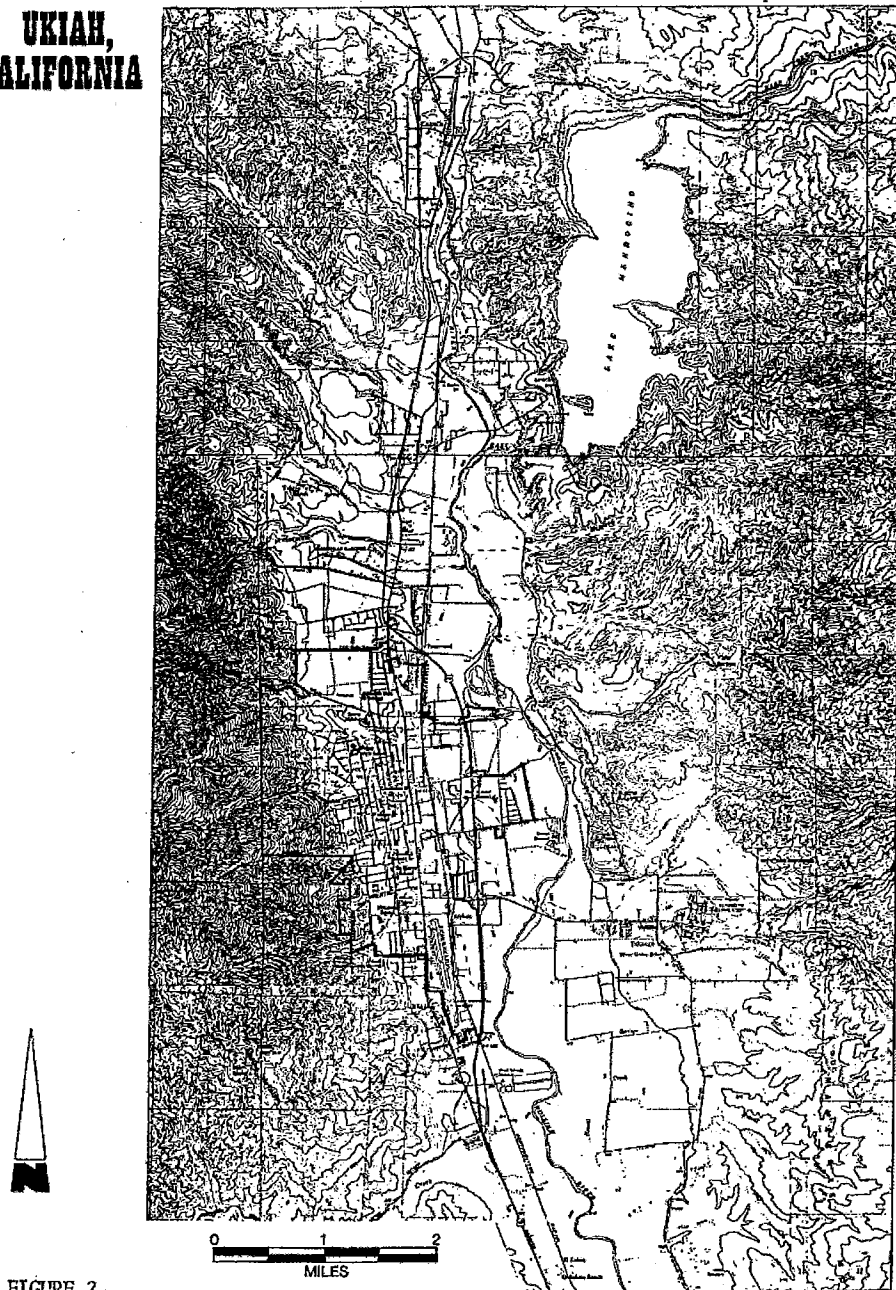


FIGURE 2

**1981 Ukiah General Plan Planning Area and LAFCO Adopted Sphere of Influence Area
(The Ukiah Valley)**

According to the 1984 *Sphere of Influence Study* prepared by William Zion for LAFCO, the adopted Sphere had 216 square miles of area. 189 square miles or 88% of the area was considered "hillside." In December of 1984, LAFCO, relying on the Zion Study reaffirmed the City's valley-wide Sphere of Influence by approving a CEQA negative declaration and adopting Resolution 84-15 – "Resolution Adopting Spheres of Influence for Cities and Special Districts in Mendocino County."

During the General Plan revision program from 1991-1995, it was determined that the Sphere of Influence was too large and did not represent the logical area for urban growth over the next 20 years. The Plan was adopted with a much smaller suggested Sphere, one that in the minds of the City Council and community, represented a more logical and manageable area for future urban expansion. However, it retained the earlier adopted western boundary in an effort to retain footing for the protection of the hillside area vistas, sensitive habitats, water quality, and other environmental resources. The Council also did not adopt recommended Annexation policies, instead choosing to entertain annexation proposals, but not initiating them.

Between 1995 and 2005, the City embarked on a General Plan implementation program, which included periodic joint City Council/Planning Commission meetings to prioritize projects and tasks. Application to LAFCO to amend and reduce the Sphere was not deemed a high priority during this time because no discussions of annexation were occurring and no proposals were filed.

In 2005, an annexation proposal for a portion of the Brush Street Triangle was submitted to the City, but progress was delayed due to ongoing City/County revenue sharing discussions and the absence of a State mandated Municipal Service Review for the City.

In 2006-2007, the City Council discussed and confirmed the 1995 General Plan recommended Sphere of Influence, continued with revenue sharing discussions, and continued to work with LAFCO to have the Municipal Service Review prepared.

In 2009 a second and separate annexation proposal for a different portion of the Brush Street Triangle was submitted, but it was similarly delayed as revenue sharing discussions and the preparation of the Municipal Service Review continued.

In 2012, the Municipal Service Review was approved by LAFCO, and while the revenue sharing discussions are ongoing, the City has decided to pursue the amendment and propose the reduction in the size of its Sphere of Influence.

The 2013 Proposed Sphere of Influence

The proposed Sphere of Influence is what is called for in the 1995 Ukiah General Plan. This proposed SOI area was publically discussed and debated over a period of many months during the preparation of the General Plan, and after a number of alternatives were discussed, it was adopted by the City Council.

It is dramatically smaller than the current adopted Sphere. It represents a more logical area in which the City could extend its services, embrace new territory, and anticipate growth over the next twenty years. A considerable amount of the area is already developed with urban land uses and receives urban services from special districts. These areas are located to the north and south of the current City limits. However, there are also vacant lands, particularly to the north that have been proposed for urban development in the past, but remain largely

undeveloped. These areas include the Brush Street Triangle, Lover's Lane, and the western portion of the Masonite property.

The proposed Sphere of Influence also includes the hillside area west of the City limits to the ridgeline. While some development and urban service capacity in this area are possible, the primary reason for its inclusion in the Sphere is to fulfill General Plan goals and policies to protect the properties below, protect the sensitive natural hillside resources, and to protect the hillside aesthetic and visual resources fundamental to Ukiah residents and the tourist industry (see expanded discussed below).

The eastern boundary of the proposed Sphere of Influence coincides with the current City limit line except in the north where it includes the Brush Street Triangle and the western portion of the Masonite property. This eastern boundary was selected for a number of reasons that included maintaining consistency with the General Plan's goals and policies to protect agricultural lands and avoid further urban development east of Highway 101, and to avoid the floodplain of the Russian River.

The southern boundary of the proposed Sphere was selected to capture land that was already development with urban land uses and receives urban services. The area in the extreme southwest corner of the Sphere was selected because it is a hillside area similar to the areas west of the City.

The Ukiah City Council recently discussed the Sphere called for in the General Plan and confirmed it as the desired Sphere of Influence for the City at this time. On February 20, 2013, the City Council adopted Resolution 2013-05 directing staff to work with LAFCo staff and update the current SOI to be consistent with the 1995 General Plan recommended SOI.

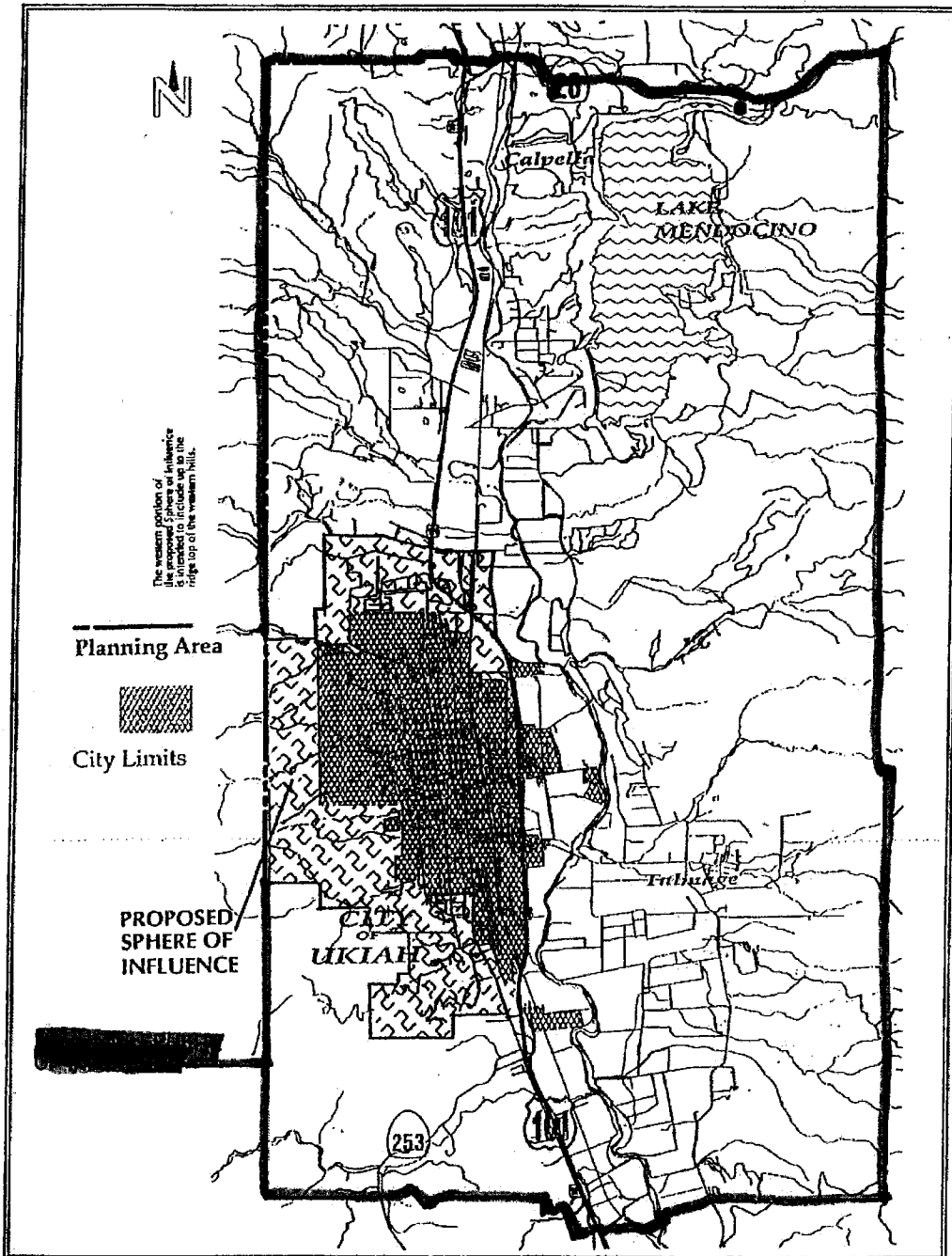
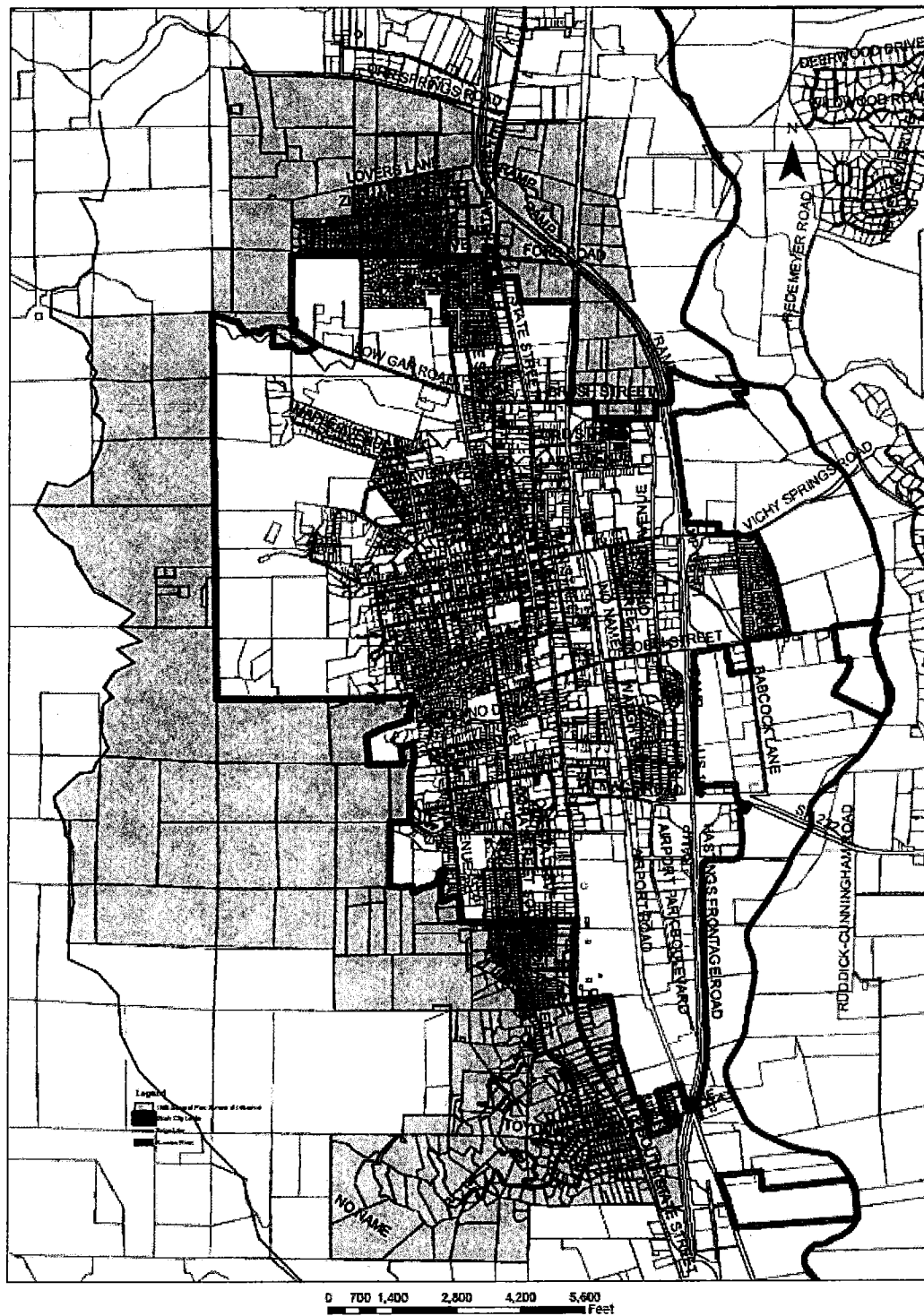


Figure II.1-D: Sphere of Influence proposed by the General Plan for LAFCo approval

Adopted by the City Council: December 6, 1995

Excerpt from the 1995 General Plan



The Current City Limits and Proposed Sphere of Influence

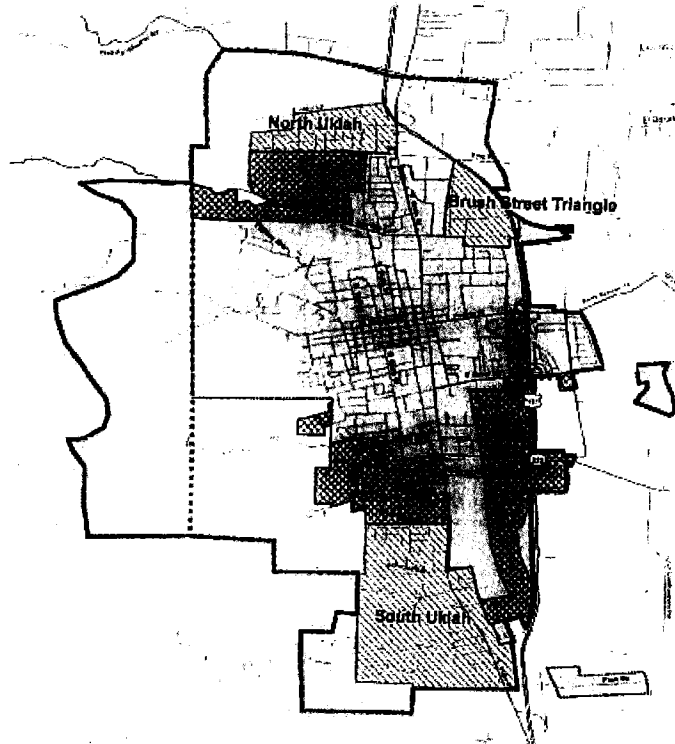
City/Proposed Sphere of Influence General Information

	Acres	Square Miles	Number of Parcels	Population 1984	Population 2010
City of Ukiah	3,100	4.5	4,997	12,600	16,075
1984 SOI	47,000	218	Unknown	11,140	n/a
Proposed SOI	6,000 (estimate)	7 (estimate)	6,277	n/a	6,306

NOTE: The 1984 SOI was originally established by LAFCO action in the late 1970's and reaffirmed in the City's 1981 General Plan and LAFCo Resolution 84-15 adopted in December, 1984.

Potential Future Annexations

The 2012 Ukiah Municipal Service Review identifies three potential future annexation areas – Brush Street Triangle, North Ukiah, and South Ukiah.



Excerpt from 2012 Ukiah Municipal Service Review

As a part of any future proposal to annex land within the Sphere, the City would prepare and submit as part of its application a Plan for providing public services to the subject property. The North and South Ukiah target areas are currently receiving water, wastewater and fire protection services from special districts, and police services from the Mendocino County Sherriff's office, as well as from the City of Ukiah.

The Brush Street Triangle, which is largely vacant, is partially located within the boundaries of the Ukiah Valley Sanitation District and is outside the boundaries of the Millview County Water District. Fire protection is and would continue to be provided by the newly formed City/District

MSR Recommended Area to be Deleted from the SOI

The Case to Retain the Western SOI Boundary

The City Council and Ukiah citizens in 1995 included these hillside area within the proposed Sphere because they overlook the City and there was concern about potential aesthetic, drainage, erosion, etc. impacts resulting from non-discretionary review development. The City included these areas in its proposed sphere to help protect the significant scenic viewsheds identified in its General Plan, as well as to protect the natural hillside resources and properties below these areas that are situated within the City limits.

Ukiah General Plan: This approach was supported by General Plan findings, goals and policies in the Vision Statement, Open Space and Conservation Element and Community Design Element. The following is an excerpt from the Open Space and Conservation Element:

1.04 Hillside development

1.04.01 Summary of major findings

Preserving the hills on the western side of the Ukiah Valley will provide environmental benefits to the Valley. Additionally, the hillsides are an aesthetic and visual resource fundamental to Ukiah residents and to the tourist industry and they add economic value to property throughout the valley. Policies related to aesthetics and viewsheds are established in the Community Design Element.

More specifically, the hills help establish the identity of Ukiah and the Valley. The resource value of these hills is dependent on (1) fire protection, (2) minimizing landslide risks, (3) maintaining a healthy habitat for wildlife and (4) providing the condition for a healthy watershed. Scattered public ownership within the hills provide opportunities for the city and county to work with other public and private agencies to acquire or seek out easements to facilitate public access of the hills, trails, and other passive recreation resource values.

These findings led to many goals, policies and implementation measures, such as the following:

Goal GP-21: Conserve open space, hillsides, stream courses, and indigenous flora and fauna for the enjoyment of future generations.

Goal OC-10: Conserve the natural woodlands environment of the area hills.

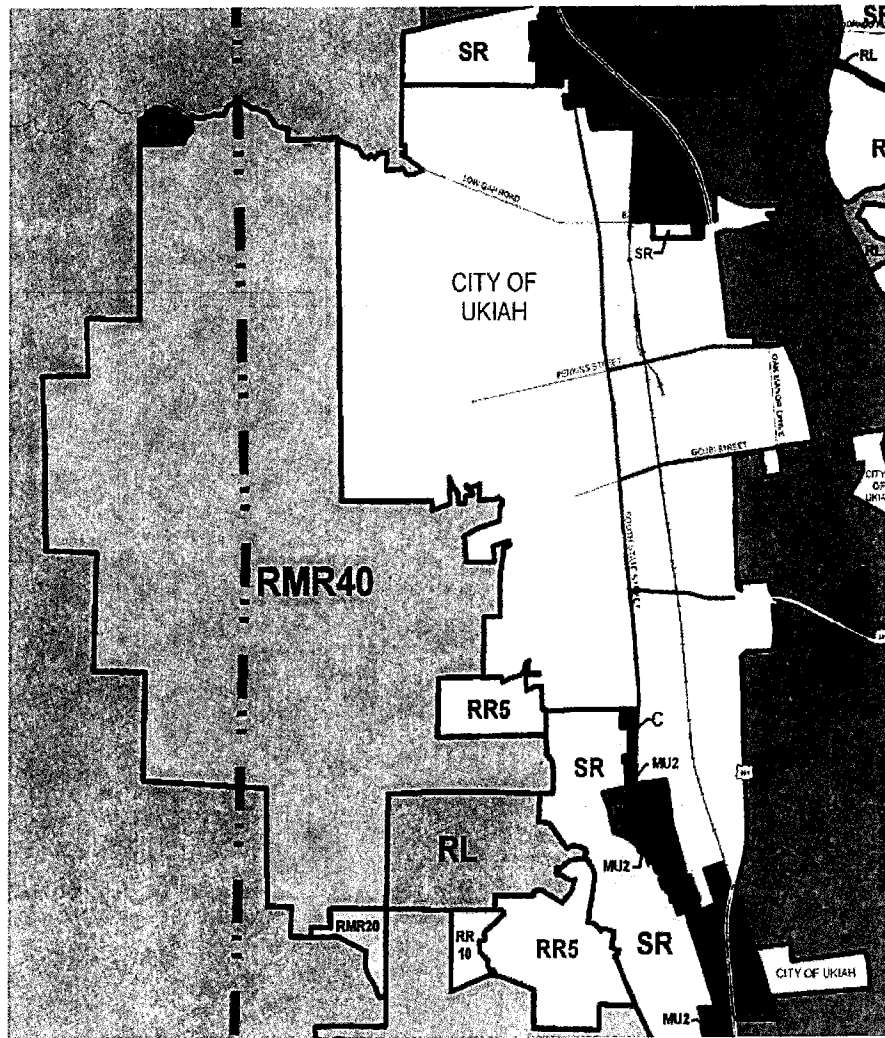
Policy OC-10.2: Roads and structures shall be designed and sited to conserve or avoid damage to the natural hillside resources where feasible.

Implementation Measure OC-10.2(b): Site and design development to minimize impacts on views from the valley.

Implementation Measure OC-10.2(c): Clearings for roads, buildings, and fire protection zones shall be sited in the least visible and ecologically damaging locations possible and screened with vegetation where feasible.

These goals, policies and implementation measures are supported by the City's adopted Hillside Zoning regulations that require discretionary review and contain specific design standards.

Ukiah Valley Area Plan: Mendocino County's Ukiah Valley Area designates the western hills properties as RMR-40 (Remote Residential 40 acre minimum parcel size).



Land Use Category: RMR-Remote Residential

Intent: The RMR classification is intended to be applied to lands having constraints for commercial agriculture, timber production or grazing, which are well suited for small scale farming and low density agricultural/residential uses by the absence of such limitations as inadequate access, unacceptable hazard exposure or incompatibility with adjoining resource land uses. The classification is also applied to some areas which might not otherwise qualify except for the fact that the land has been divided and substantial development has occurred.

General Uses: Residential uses, agricultural uses, cottage industries, residential clustering, public facilities, conservation and development of natural resources, and recreation, utility installations.

Vision Statement: Mendocino County's Ukiah Valley Area Plan includes the following language in its Vision Statement:

"The Ukiah Valley is a special place to us now and we wish to preserve those aesthetic qualities such as its small town nature, historic buildings, and surrounding views of the hills and agricultural lands that give the Valley its character"

The statement is supported by the following Goal in the Community Design Element:

Goal CD-2: Protect and enhance the natural beauty and scenic viewsheds of the Ukiah Valley.

However, there are no underlying policies specific to hillside conservation/protection and the primary implementation measure calls for the development of design guidelines that may or may not address hillside development issues.

Mendocino County Zoning: The County zoning classification for the western hills area above the City is U-R:L: 40 (Upland Residential – 40 Acre Minimum parcel Size). This classification permits a number of land uses without discretionary review. These include single family residential, cemeteries, community recreation, animal sales and service, general agricultural, forest production and processing, and others.

LAFCO Policy: As indicated in the 2012 Ukiah Municipal Service Review, one LAFCO policy is that Sphere boundaries should not be set to include areas that would be difficult for the City to serve. While the western hills area of the proposed Sphere could receive City wastewater and police services, fire protection would continue to be provided by CalFire because of the high wildland severity zone designation. Additionally, water service would likely be provided by private sources similar to the existing Hull/Piffero water system in the hillside area within the current City limits.

If this area within the proposed Sphere were ever targeted for annexation, the City in all likelihood, would prezone it as remote hillside residential with large minimum parcel sizes, and subject any future development to strict hillside development regulations.

The purpose of including it in the proposed Sphere is to help protect the significant scenic viewsheds identified in its General Plan, as well as to protect the natural hillside resources and properties below these areas that are situated within the current City limits.

City Concerns: The City remains concerned about future unregulated development above the City that could cause significant visual and ecological impacts on the City and surrounding area. This is why the City continues to propose the western Sphere boundary in the same location as suggested in the 1995 City General Plan.

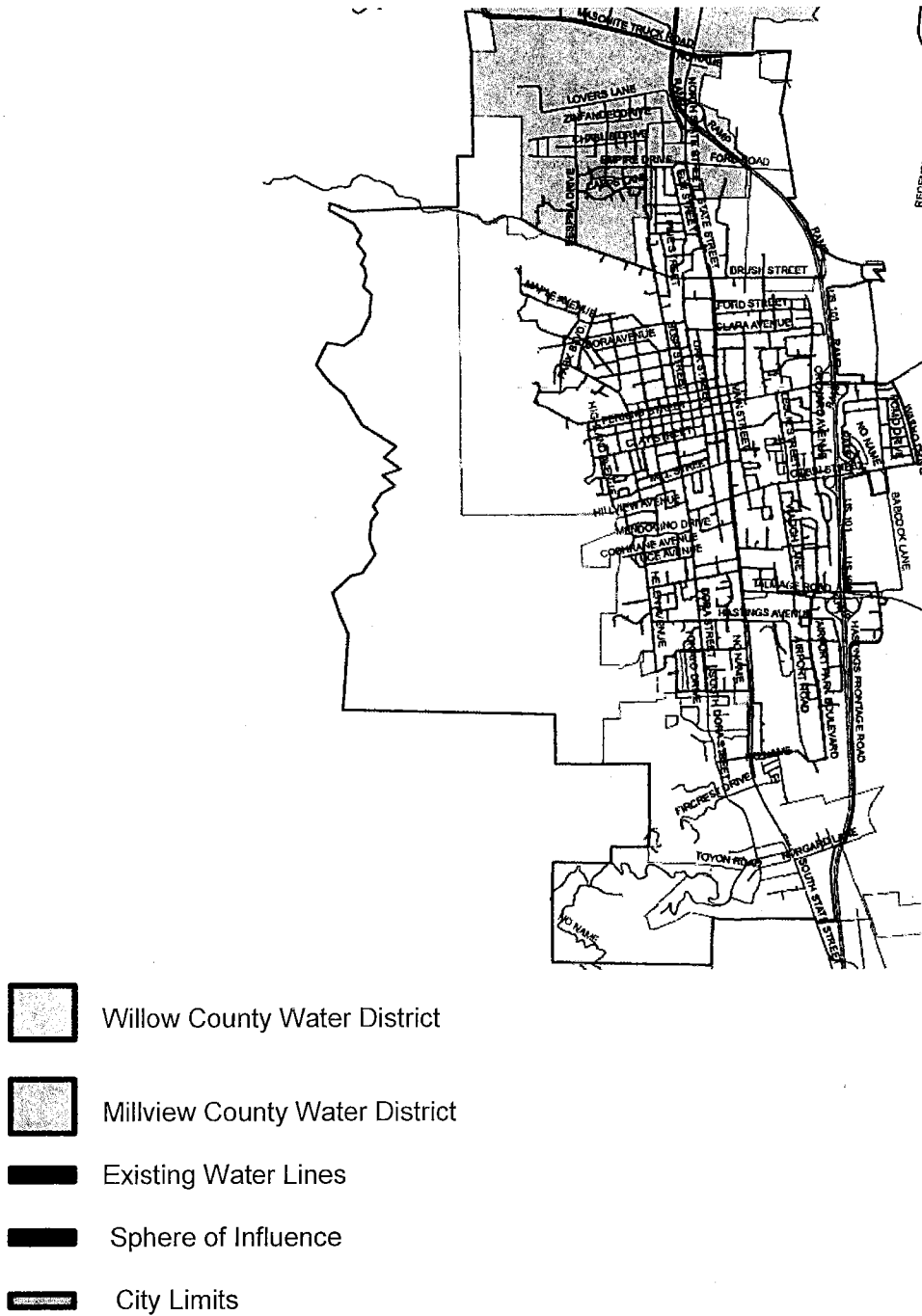
Service Plan for the Proposed Sphere of Influence

California Government Code Section 56653 requires a City to provide a concept plan for providing services within a proposed Sphere of Influence. These services include water, wastewater, storm drainage, fire protection, and police services. In addition, a general discussion of streets and circulation is provided below.

A large portion of the proposed Sphere area is currently developed and water, wastewater, street, electric utility, and storm drain infrastructure are already in place. Extension of some utility infrastructure would be required for the vacant or underutilized areas including the Brush Street Triangle (mixed use), western hills (remote residential), Masonite site (industrial), and Lovers Lane area (agricultural). A more detailed plan for extending infrastructure and providing services to these areas would be prepared at the time of annexation and/or development.

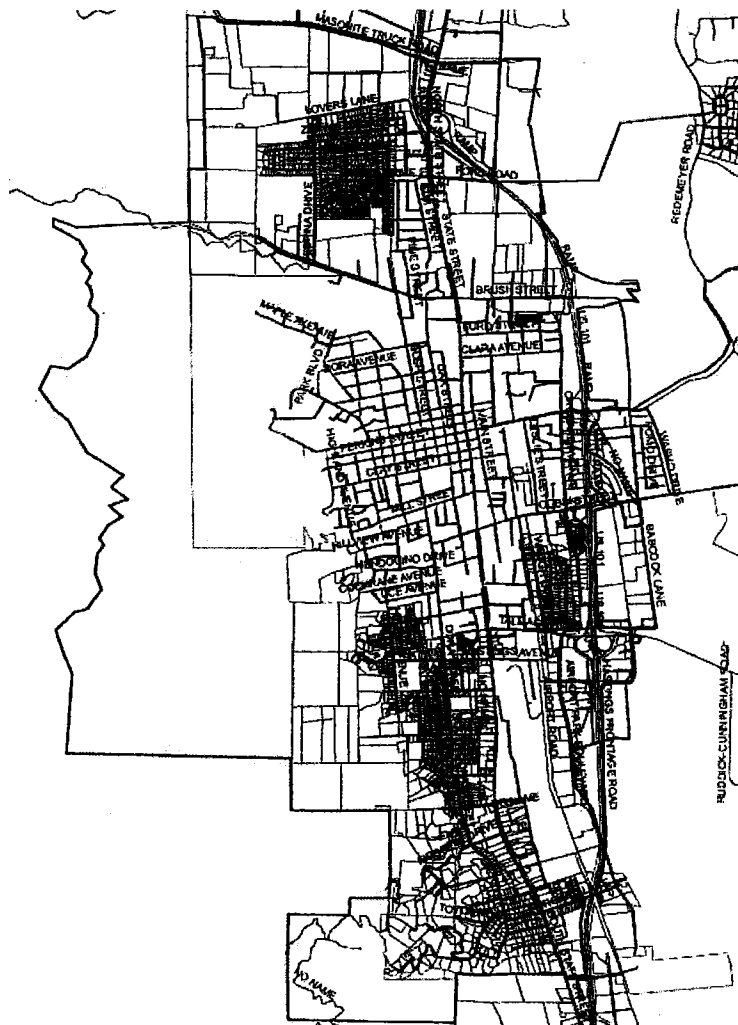
Service	Current Provider
Water	Millview and Willow County Water Districts
Wastewater	Ukiah valley Sanitation District
Police Protection	Mendocino County Sheriff
Fire Protection	City of Ukiah/Ukiah Valley Fire Protection District
Streets/Circulation	Mendocino County
Electricity	PG&E
Natural Gas	PG&E





Water Service



Prior to any future annexation proposal, the City would meet with the Millview or Willow County Water District and discuss the proposal and the provision of water service. Discussion topics would include, but not be limited to the most cost effective and efficient way to deliver service, potential financial impacts to the District, etc.

Wastewater Service



-  Ukiah Valley Sanitation District
-  Existing Wastewater Lines
-  Sphere of Influence
-  City Limits

Prior to any future annexation proposal, the City would meet with the Ukiah Valley Sanitation District and discuss the proposal and the provision of wastewater service. Discussion topics would include, but not be limited to the most cost effective and efficient way to deliver service, potential financial impacts to the District, etc.

—



■ Sphere of Influence

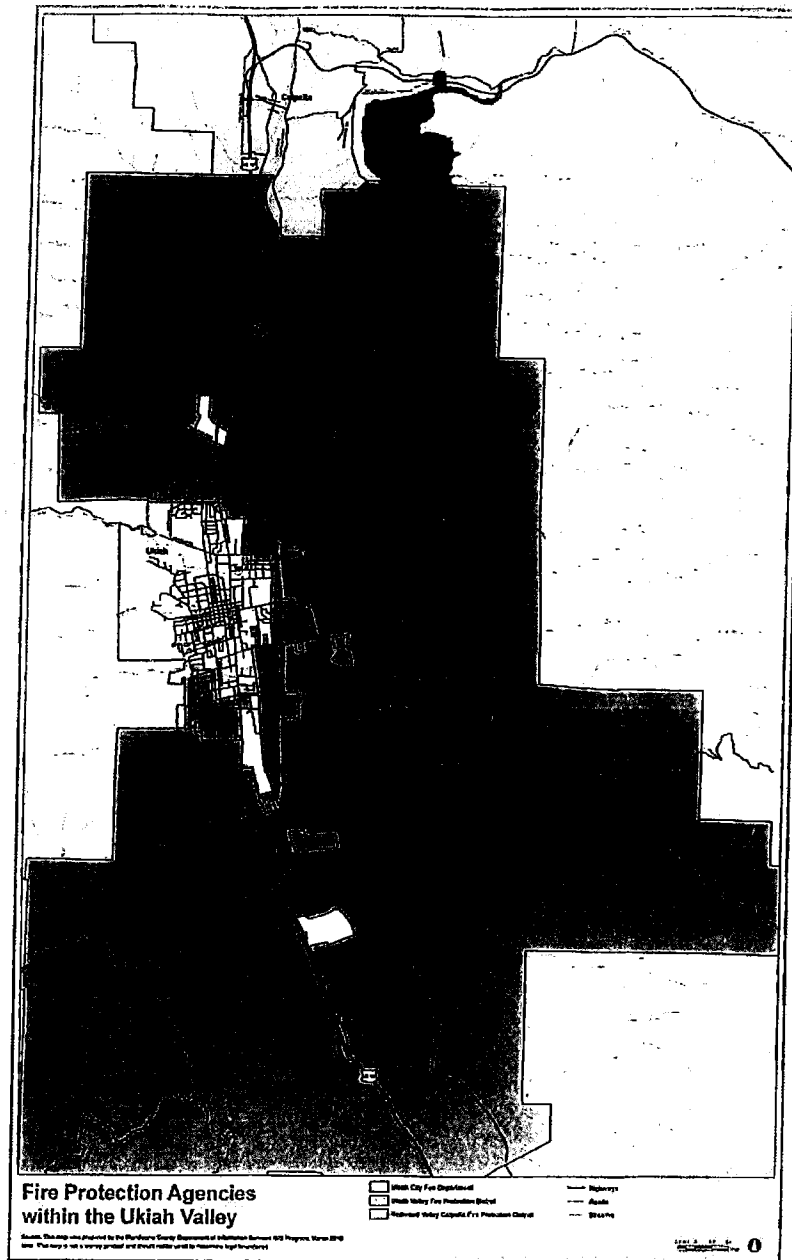
City Limits

Prior to any future annexation proposal, the City would meet with Mendocino County and discuss the proposal and the existing storm drainage system, including problem areas, past studies, recommended improvements, etc.

Fire Protection Service

The Ukiah Valley Fire District has completed a functional consolidation with the City of Ukiah Fire Department. Not only did the City hire the UVFD fire chief to serve in a similar capacity but it has also agreed to share personnel and equipment. The arrangement allows for three-person engine companies at the District's North State Street station and the South State Street station that would respond to calls from the Cal Fire dispatch center. The dispatch center now serves both the City and the District. The arrangement also allows the City to locate its ambulances at the Ukiah station at 300 Seminary Avenue. Since the District and the City have an automatic aid agreement dispatch of ambulance service, providing advanced life support would not be affected. Three-person engine companies would be a great improvement in services.

The Draft MSR for the Ukiah Valley Special Districts recommends that the District and the City work on a formal consolidation that would include a more formal chain of command, common training, and updated equipment. The City maintains 12 apparatus, 10 of which are scheduled for replacement within the next five years. Of those 10 pieces, four are past due for replacement. The District has five engines, three of which are over 15 years old and in need of replacement. In addition, the patrol mini pumper is 22 years old and should also be replaced. Perhaps a consolidation would help fund new equipment.



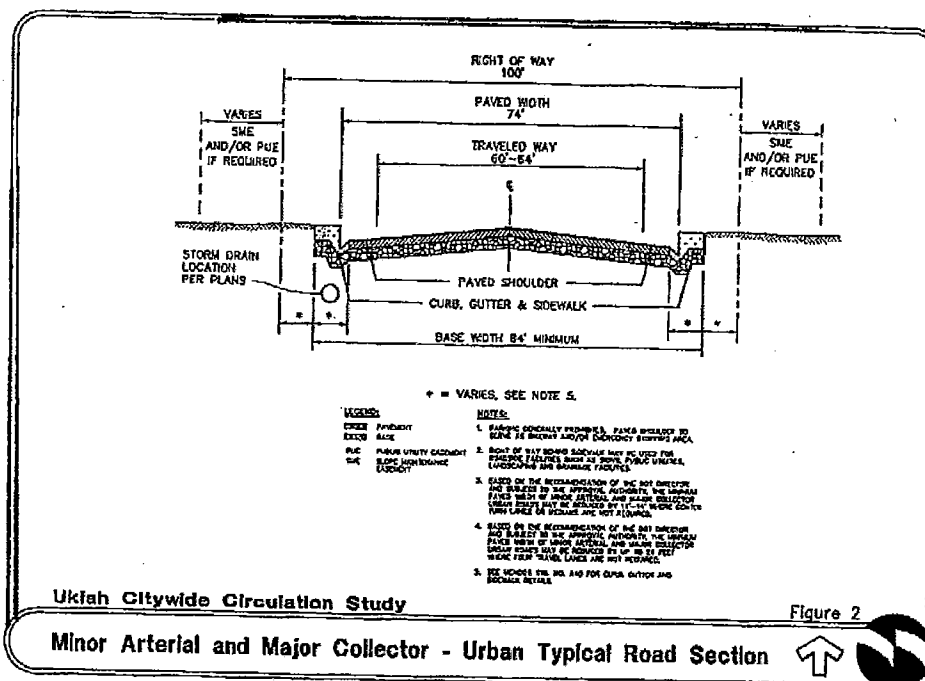
Police Services

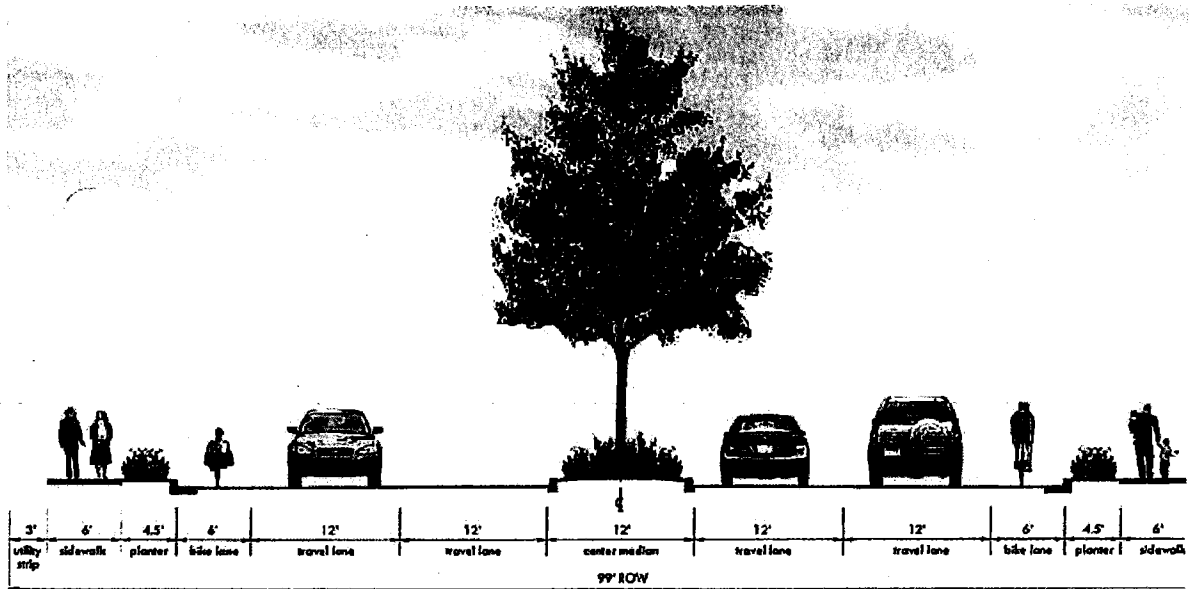
As indicated in the 2012 Municipal Service Review, the City Police force includes 26 sworn staff for a ratio of 1.63 per 1000 population, which is comparable to nearby cities of similar size. During 2010, they responded to approximately 82 calls for service per day, many of which were outside the City limits and within the proposed Sphere of Influence.

There will be no change in Police Service if the proposed Sphere of Influence is approved. The Police will continue to respond to calls within the Sphere, particularly the potential annexation areas to the north and south. If any annexations are proposed in the future, a study will be conducted to determine if the Police Department still has the capacity to serve the new territory. In the case of the predominantly vacant Brush Street Triangle, the study would determine if additional police staff would be needed for future development and if so, how much future property and potential sales tax revenue would be generated to provide funding for that additional capacity.

Streets and Circulation

For the most part, the street network with the proposed Sphere of Influence is existing with the exception of the vacant lands in the northern area. The street network in these vacant areas will be designed and constructed to City standards as development occurs. While the City has standard street specifications, it is currently exploring the *Complete Streets* design concept. *Complete Streets* are living streets, which are designed and operated to enable safe, attractive, and comfortable access and travel for all users, including pedestrians, bicyclists, motorists and public transport users of all ages and abilities. It is likely that future roads and streets, both new and reconstructed would be designed as *Complete Streets*.

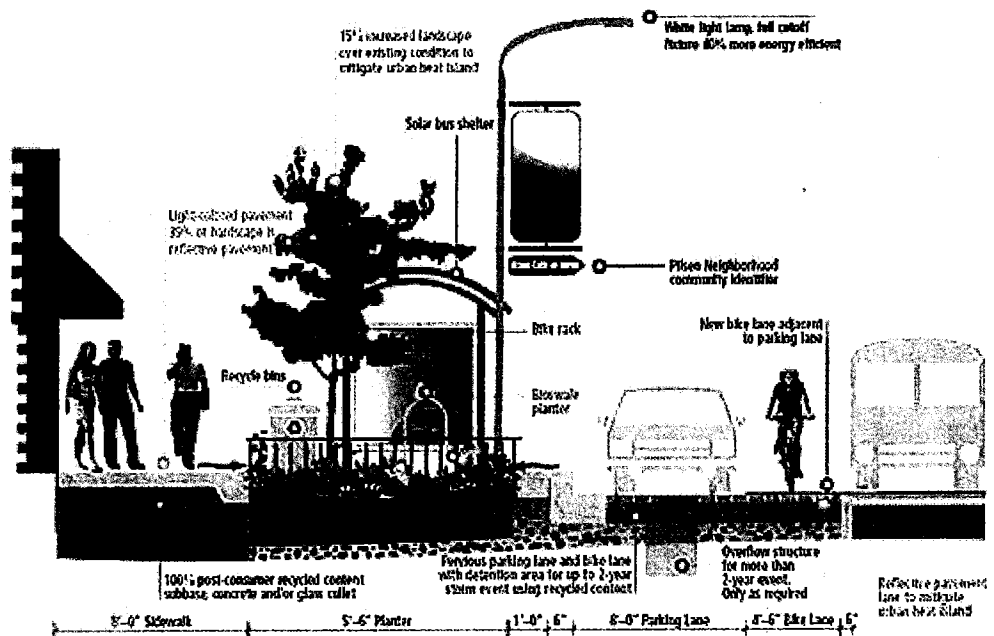




Complete Street Cross-Section (example)

LEGEND

- Recycled content
- Energy conservation
- Stormwater management
- Urban heat island mitigation
- Public transportation
- Water efficiency
- Education
- Monitoring



Source: CDOT

Complete Street Detail (example)

Street Extensions

The 1995 General Plan identified a number of desired future street extensions within the proposed Sphere area. These include the extension of Orchard Avenue through the Brush Street Triangle and Masonite property to the eastern extension of Hensley Creek Road; the upgrade of Orrs Creek Road and its extension to the east; and the extension of Airport Road or Airport Park Boulevard to Plant Road. As future development and redevelopment occur, these road extensions would be reevaluated and considered.

In 2006, the City commissioned a Citywide Circulation Study to quantify the existing and future transportation conditions and facility needs within the City. The Study provided solutions to existing and future capacity deficiencies; safe routes for bicyclists and pedestrians; enhanced bus and transit opportunities; updated truck routes; a prioritized improvement plan; and financing options.

The Study identified State Street as the only major collector street in the proposed Sphere and Hensley Creek Road, Orr Springs Road, Low Gap Road (western portion), Lovers Lane, South Dora Street and Oak Court Road and Minor Collector streets. As future development is proposed, these streets would be evaluated and improvements required as necessary.

In 2003, the Mendocino Council of Governments prepared a Traffic Study for the Brush Street Triangle. The Study depicted a concept for the extension of Orchard Avenue through the Triangle (see graphic below). It is likely that the Brush Street Triangle would be next property annexed to the City and the extension of Orchard Avenue would be the next circulation improvement in the proposed Sphere area.



**Excerpt from the MCOG 2003 Brush Street Triangle Transportation Study
Extension of Orchard Avenue from Brush Street (12) to Ford Road (11)**

RESOLUTION NO. 2013-05

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF UKIAH MAKING APPLICATION
TO THE LOCAL AGENCY FORMATION COMMISSION FOR AMENDMENT TO AND
REDUCTION OF THE CITY'S SPHERE OF INFLUENCE**

WHEREAS, The City of Ukiah's existing Sphere of Influence includes the land between Highway 20 on the north, Burke Hill Road on the south, and ridge-top to ridge-top, west to east; and

WHEREAS, The City Council of the City of Ukiah certified an Environmental Impact Report ("EIR") and adopted its General Plan on December 6, 1995, which included a proposed reduction of the Sphere of Influence (SOI) as illustrated in Exhibit A, attached hereto ("proposed Ukiah SOI"); and

WHEREAS, On September 4, 2012, the Mendocino County Local Agency Formation Commission adopted the City of Ukiah Municipal Service Review (MSR), which included a review of areas likely to receive services in the proposed Ukiah SOI; and

WHEREAS, The adopted MSR recommended reducing the size of the proposed Ukiah SOI by shifting the western boundary downslope from the ridge-top because it concluded that the City could not provide adequate public services to this area; and

WHEREAS, Some City services, such as sanitary sewer, police services, fire protection, etc. are currently provided to properties high on the western hillside, demonstrating that the City can provide services to such areas; and

WHEREAS, The City is concerned about maintaining aesthetic quality, managing drainage, protecting sensitive native plants and habitats of, and avoiding erosion impacts to this scenic western hillside area and, for this additional reason, seeks to retain it in the proposed Ukiah SOI; and

WHEREAS, The County of Mendocino has certified an EIR for and adopted a Ukiah Valley Area Plan ("UVAP") as its General Plan which encompasses the proposed Ukiah SOI; and

WHEREAS, The UVAP includes land use designations for the proposed Ukiah SOI which are substantially similar to the land use designations contained in the City's General Plan; and

WHEREAS, On February 20, 2013, the City Council of the City of Ukiah discussed the existing and General Plan proposed Spheres of Influence, heard from the public, and concluded that it desired to reduce the size of its SOI consistent with its adopted General Plan.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Ukiah hereby resolve, determine, find, and order as follows:

SECTION 1. The City Manager or her designee is directed to prepare and submit to the Executive Officer of the Mendocino County Local Agency Formation Commission an application and request to amend the City's Sphere of Influence consistent with the Ukiah General Plan pursuant to Government Code Section 56428, together with a certified copy of this Resolution.

SECTION 2. This action is taken based on the following findings:

- A. A public hearing was conducted and public testimony and comments heard and considered.
- B. The proposal is not injurious to the public health, safety, or welfare because it represents a major reduction in the size of the existing Sphere of Influence,

and no significant adverse impacts resulting from the reduced Sphere of Influence were identified in the General Plan EIR.

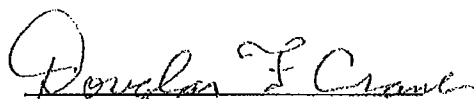
- C. The proposed western boundary of the Sphere of Influence is reasonable and appropriate because properties already high on the hillside receive public services from the City of Ukiah and including the parcels within this area would assist the City to implement its General Plan goals and policies related to maintaining the aesthetic quality of the hillside area, protecting native vegetation and sensitive habitats, managing drainage and avoiding potential erosion resulting from potential future development in this designated scenic area; and
- D. The proposal, if approved, would be consistent with the City of Ukiah General Plan.

SECTION 3. The submission of the application is not subject to further review under the California Environmental Quality Act, because:

- A. The reduction of the City's existing SOI to the proposed Ukiah SOI is exempt from environmental review pursuant to Public Resources Code Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment);
- B. The reduction of the City's existing SOI to the proposed Ukiah General Plan SOI is categorically exempt as a Class 5 categorical exemption under 14 CCR §15305, since it consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density; and
- C. The City incorporates herein by reference the EIRs prepared for the adoption of the City's 1995 General Plan and the adoption of the 2011 Mendocino County Ukiah Valley Area Plan, both of which are available on the City of Ukiah and Mendocino County websites, respectively, at http://www.cityofukiah.com/pageserver/?page=planning_gen_plan and http://www.co.mendocino.ca.us/planning/pdf/UVAP_cover.pdf.

PASSED AND ADOPTED on February 20, 2013 by the following Roll Call Vote:

Ayes:	Landis, Rodin, Thomas, Baldwin, and Mayor Crane
Noes:	None
Abstain:	None
Absent:	None


Douglas F. Crane, Mayor

ATTEST:

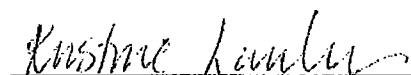

Kristine Lawler, City Clerk

EXHIBIT A Proposed Ukiah Sphere of Influence

Ukiah Valley General Plan and Growth Management Program

City of Ukiah • Mendocino County, California

II.1. What is a General Plan? ♦ Page 8

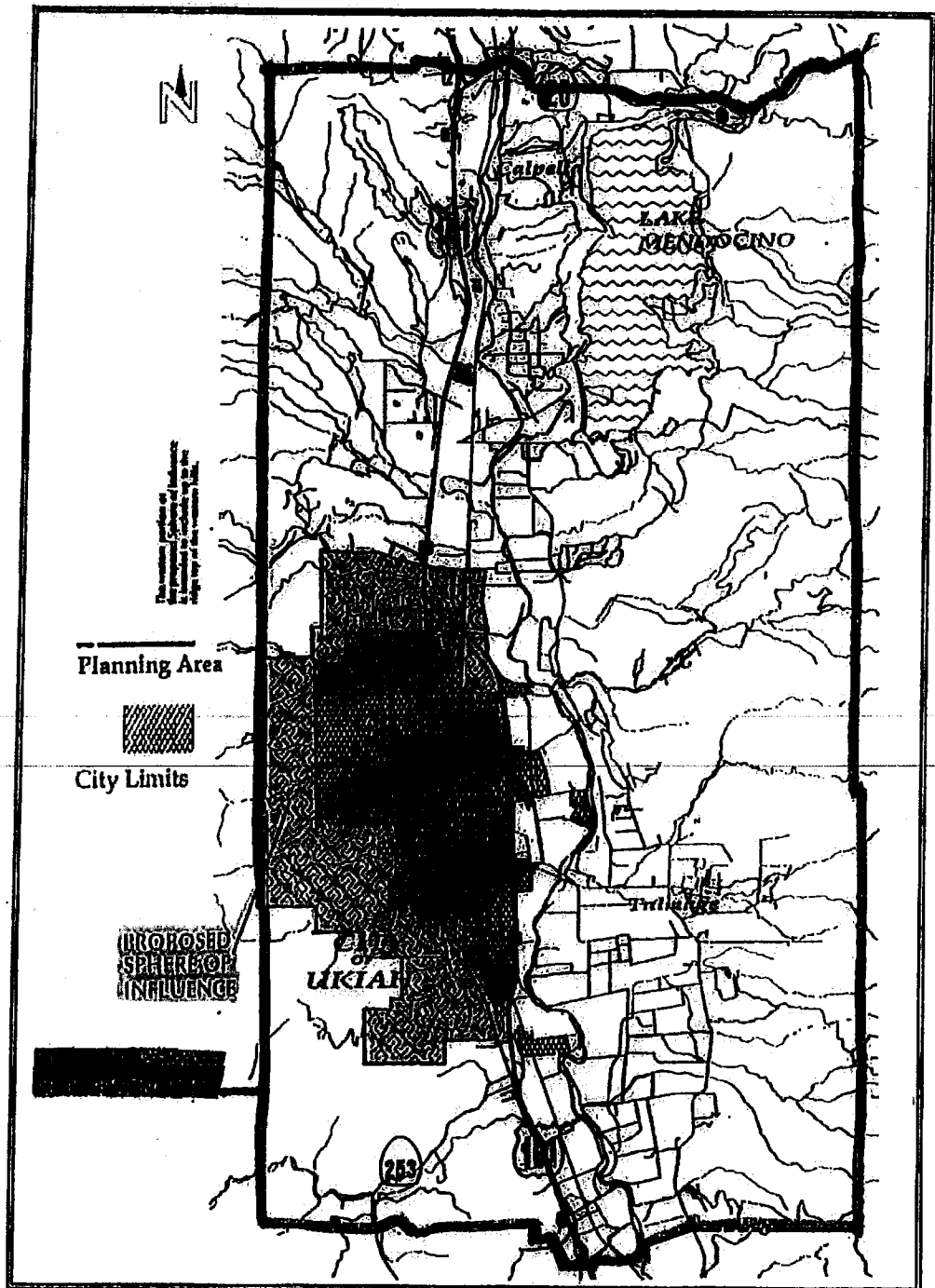


Figure II.1-D: Sphere of Influence proposed by the General Plan for LAFCo approval

Adopted by the City Council: December 6, 1995



COUNTY OF MENDOCINO

DEPARTMENT OF PLANNING AND BUILDING SERVICES

860 NORTH BUSH STREET • UKIAH • CALIFORNIA • 95482
120 WEST FIR STREET • FT. BRAGG • CALIFORNIA • 95437

Steve Dunncliff, Dir.
Telephone 707-463-4
FAX 707-463-4
Ft. Bragg Phone 707-964-4
Ft. Bragg Fax 707-961-4
pbs@co.mendocino.ca.us
www.co.mendocino.ca.us/plan

February 20, 2013

Mr. Charley Stump, Director
Planning and Community Development
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

Mr. Stump,

I am writing to express the Department of Planning and Building Services' support for the proposed application to the Local Agency Formation Commission for amendment to and reduction of the City of Ukiah's Sphere of Influence (SOI). The current SOI boundary includes rural areas of Ukiah Valley that are well outside the area the City can be realistically expected to grow in the next 20-years.

The proposed reduced SOI is consistent with the City's 1995 SOI, as delineated in the Ukiah Valley Area Plan. The reduced SOI area better represents the area and direction of likely future urban development north and south of the City's current boundary with the exception of two areas that are in the County's AG 40 land use designation (see attached figure).

The larger area (Area 1) lies within a public utility service area where the County has seen continued community support for the existing agricultural use. The smaller area (Area 2) lies east of Highway 101 and is not within a public utility service area. Consequently these areas may not likely develop with urban uses within the 20-year timeframe of the proposed reduced SOI.

The Department looks forward to the opportunity to meet with representatives from the City to continue discussion regarding the City's reduced SOI and future annexation areas within the sphere.

Thank you

Andy Gustavson, Chief Planner
Planning and Building Services

Cc: Steve Dunncliff, Director, Planning and Building Services

AG:ag LTR CITY OF UKIAH SOI 130220 DOC

EXHIBIT "R"

RESOLUTION NO. _____**RESOLUTION OF APPLICATION OF THE CITY COUNCIL OF
THE CITY OF UKIAH INITIATING PROCEEDINGS FOR A
DETACHMENT FROM THE UKIAH VALLEY SANITATION
DISTRICT (CITY AREA DETACHMENT)****WHEREAS:**

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

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

1. This proposal is made, and it is requested that proceedings be taken, pursuant to the Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000, commencing with section 56000 of the California Government Code.
2. This proposal is a detachment from the Ukiah Valley Sanitation District (hereafter "District").
3. A map of the affected territory is set forth in Exhibit A, attached hereto and by reference incorporated herein.
4. It is desired that the proposal be subject to the following terms and conditions to be imposed by the Local Agency Formation Commission pursuant to Government Code section 56886:
 - A. **Transfer of real property** –Transfer to the City of all easements and other interests in real property currently held by the District within the detachment area that are part of its collection system serving the detachment area.
 - B. **Transfer of physical assets** - Transfer to the City all physical assets comprising the District's waste collection system within the detachment area.

C. **Sharing facilities and costs**

(1) After the detachment is completed, the City and District shall continue to share infrastructure and costs required to collect and treat wastewater originating in the District and the City in accordance with the existing Participation Agreement, dated July 19, 1995, as amended on March 24, 1999 ("Amendment No. 1") and December 15, 2004 ("Amendment No. 2"), between the City and the District and on file in the office of the City Clerk of the City. As provided in recital 7 of Amendment No. 2, in 2006 the City commenced construction of a \$75,060,000 project to reconstruct the wastewater treatment plant that services the District and the City. ("WWTP Project.") The WWTP Project consisted of two related projects; a "Capacity Project" to increase the capacity of the plant and an "Upgrade/Rehabilitation Project." The Capacity Project accounted for approximately 32% of the project cost. On March 1, 2006, the Association of Bay Area Governments ("ABAG") issued 2006 Water and Wastewater Revenue Bonds, Series A ("WWTP Bonds") pursuant to an Installment Sale Agreement between the City and ABAG, dated March 1, 2006 and on file with the City Clerk of the City. To assure the repayment of the WWTP Bonds the City and the District entered a Financing Agreement, dated March 2, 2006 and on file with the City Clerk of the City. Under the Financing Agreement the District is required to pay a portion of the debt service on the WWTP Bond as follows: (1) Capacity Project – 65%; (2) Upgrade/Rehabilitation Project – in the same percentage as for its share of operational costs pursuant to Section 1 of the Participation Agreement.

(2) Except as provided in subsection (3), below, the District shall continue to pay its share of the debt service on the WWTP bonds for the Upgrade/Rehabilitation Project in accordance with the Financing Agreement. That percentage has been 53% City, 47% District, but the percentage for the District will decrease and the percentage for the City will increase substantially when the detachment area is removed from the District. Those revised percentages shall be submitted by the City Engineer to LAFCO prior final decision on the approval of the detachment.

(3) The District's proportionate share of the Capacity Project was fixed initially at 65% of the debt service for the WWTP bonds. That percentage shall be modified from the current 65% to a fraction in which the denominator is 2400 Equivalent Sewer Service Units ("ESSUs"), as defined in Section 1 of the Participation Agreement, which is the number of ESSUs resulting from the Capacity Project, and in which the numerator is the number of those ESSUs already assigned to the District as a result of new connections within the portion of the District outside the detachment area plus the

number of ESSUs required by the District to satisfy the demand for new connections in the reduced District territory and in the District's sphere of influence. [More specific details to be developed prior to acceptance of application by Executive Officer.]

D. **Transfer of monetary assets** – Upon completion of the detachment, a proportionate share of District's monetary assets, including cash on hand, and all reserve funds, including the rate stabilization fund, shall be transferred to the City. The proportion attributable to the detachment area is determined by multiplying all of these funds by a fraction the denominator of which is the total revenue received by the District in the five full fiscal years for which the City has audited financial statements prior the effective date of the detachment, as disclosed in the City's audited financial statements, and the numerator of which is the amount of such revenue from the area detached from the District. [Details and more specific requirements to be completed to acceptance of the application by the Executive Officer.]

E. **Change in property tax allocation factors** – For the fiscal year following completion of the detachment, and in subsequent fiscal years, the property tax apportionment factors allocated to the District within the detachment area shall be reapportioned to the City pursuant to the agreement between the City and the Mendocino County Board of Supervisors, dated [date] pursuant to section 99 of the California Revenue and Taxation Code.

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

5. Reasons for the proposal are to:

A. Eliminate an unnecessary and confusing overlap of boundaries between the City of Ukiah and the District. None of the properties to be detached from the District receive physical sanitary collection or disposal or billing services from the District. The City already provides all of these services within the detachment area under a Participation Agreement between the City and the District.

B. Eliminate existing and potential conflicts and inconsistencies within City limits between fees and sewer service regulations adopted by the District Board of Directors and the City Council.

C. Promote the coordinated provision of urban services by a general law city within its corporate boundaries.

D. Avoid imposing current and potentially future unnecessary and duplicative costs of District administration on residents and property owners within the area to be detached.

E. Reduce the potential for future conflicts over the payment of the Wastewater Treatment Plant bonds .

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

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

AYES:

NOES:

ABSTAIN:

ABSENT:

Philip E. Baldwin, Mayor

ATTEST:

Kristine Lawler, City Clerk

EXHIBIT "S"



ITEM NO.: 12a

MEETING DATE: November 5, 2014

AGENDA SUMMARY REPORT

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

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

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

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

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

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

Citizens advised:

Requested by: City Council

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

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

1. Map of area to be detached

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

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

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

5. Resolution of Application to Detach City areas from District

6. Justification of Proposal

Approved: _____

Jane Chambers, City Manager

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

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

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

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

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

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

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

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

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

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

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

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

Step 1 -- Application to LAFCO

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

Step 2 -- LAFCO review and approval/denial

Receive application including City Council resolution
Receive property tax exchange agreement by Board of Supervisors and City Council

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

LAFCo staff issues a notice of exemption

Step 3 -- Conducting Authority hearing and decision

Public notice -- publish, post, mail

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

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

If required, an election is held in the detachment area

Vote results – a majority is needed

Board of Supervisors adopts resolution declaring results of election

Step 5 -- Final filing by LAFCO staff

LAFCO staff reviews resolution for conformance with LAFCO approval

LAFCO issues and records a Certification of Completion

LAFCO files detachment with State Board of Equalization et al

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

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

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

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

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

The conditions proposed in the resolution are:

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

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

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

C. **Sharing facilities and costs** –

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

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

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

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

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

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

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

Recommendations:

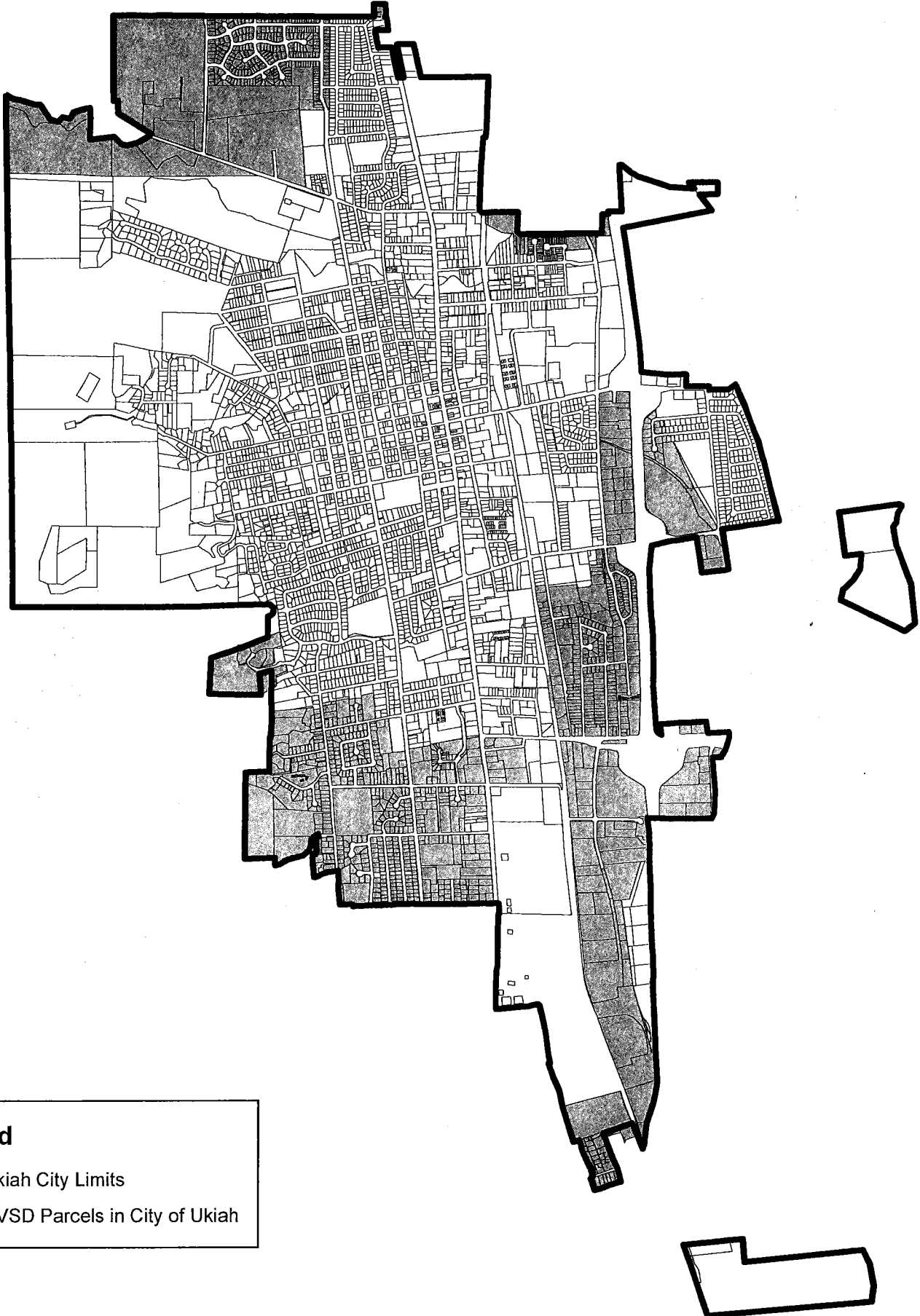
Staff recommends that the City Council adopt the resolution of application, and direct staff to submit to the LAFCO Executive Officer the required documents to initiate detachment proceedings before LAFCO, request from the County Assessor the necessary property tax information to begin negotiations with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

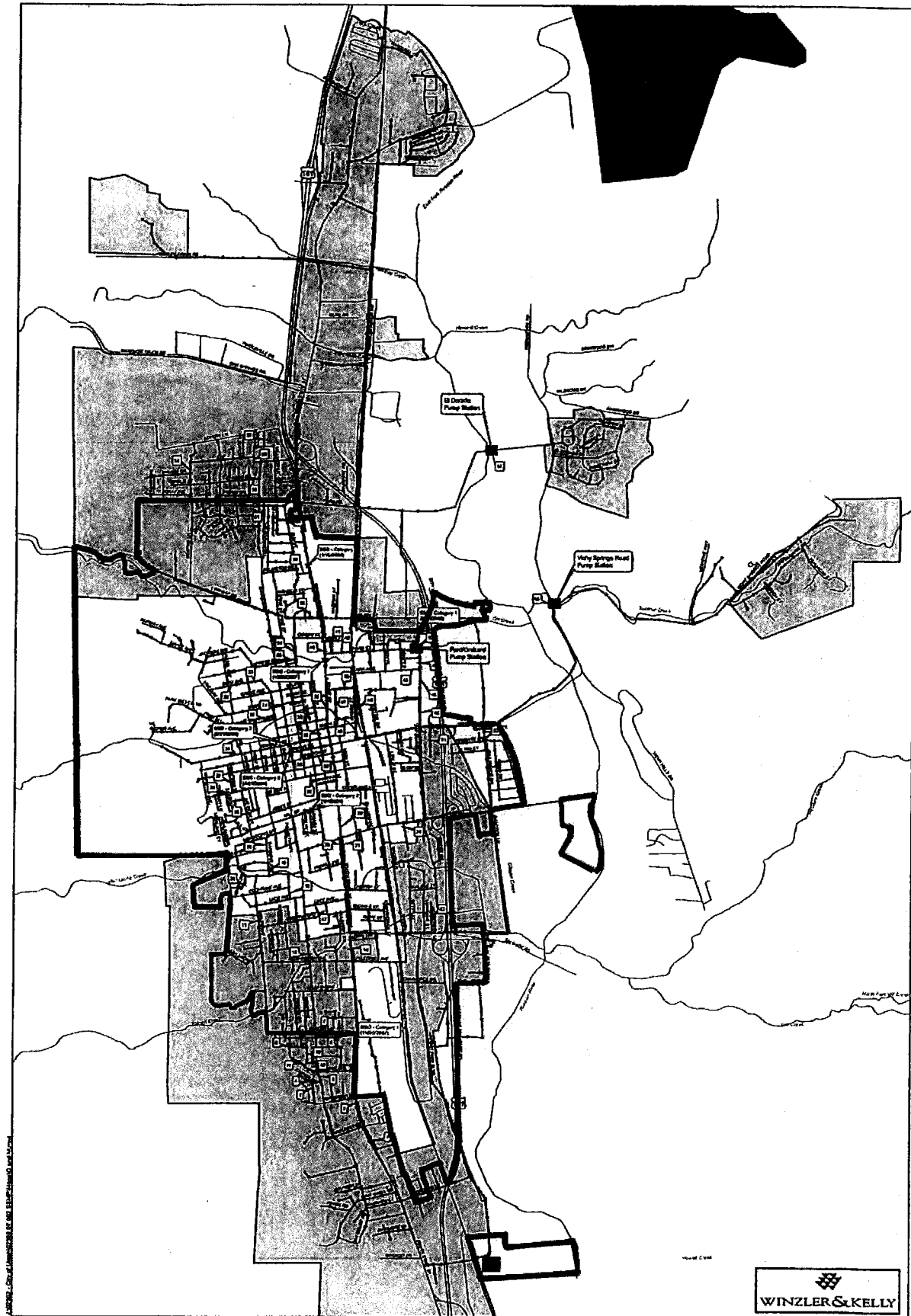
Fiscal Impact:

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

<u>Amount Budgeted</u>	<u>Source of Funds (title and #)</u>	<u>Account Number</u>	<u>Addit. Appropriation</u>
<u>Requested</u>			

UVSD Parcels within Ukiah City Limits





Legend

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

0 1,400 2,800 4,200 Feet

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



**Sewer System Management Plan
Mendocino County, California**

02502-07-002
April 2009

WINZLER & KELLY

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

JUSTIFICATION OF PROPOSAL

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

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

TYPE OF PROPOSAL: Detachment

AGENCY CHANGES RESULTING FROM THIS PROPOSAL

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

NOTIFICATION

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

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

PROJECT INFORMATION

Please provide project-related information for the following questions:

1. Do the proposed boundaries create an island of non-agency territory? [] Yes [X] No
2. Do the proposed boundaries split lines of assessment or ownership? [] Yes [X] No
3. Does the proposal involve public rights-of-way or easements? [X] Yes [] No
4. Does the proposal involve public land or land assessed by the State? [] Yes [X] No

5. Does any part of the proposal involve land under a Williamson Act Contract or Farmland Security Zone? [] Yes [X] No
6. Does any part of the proposal involve land with a Wildlife/Habitat Easement or Agricultural Land Conservation Easement? [] Yes [X] No
7. List the affected Assessor Parcel Numbers, Owners of Record and Parcel Sizes:

(See attached list)

8. Physical Location of Proposal: **(See attached map)**
9. Has an application been filed for an underlying project (such as Development Plan, Conditional Use Permit, or Tentative Subdivision Map)? [] Yes [X] No

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

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

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

There will no change in existing public services or facilities

11. Indicate which of these services or facilities will require main line extensions or facility upgrades in order to serve the affected territory: **N/A**
12. Provide any other justification that will assist the Commission in reviewing the merits of this request.

The proposed detachment will:

- Eliminate an unnecessary and confusing overlap of boundaries between the City of Ukiah and the District within the detachment area. None of the properties to be detached from the District receive physical sanitary collection or disposal or billing services from the District. The City provides these services under a Participation Agreement with the District, dated July 19, 1995.
- Eliminate existing and potential future conflicts and inconsistencies within City limits between fees and sewer service regulations adopted by the District Board of Directors and the City Council.
- Promote the coordinated provision of urban services by a general law city within its corporate boundaries.
- Avoid imposing unnecessary and duplicative costs of District administration on City residents in the area to be detached.
- Reduce the potential for future conflicts over the payment of more than \$75 Million in bonds ("WWTP bonds") issued to upgrade and expand the City owned wastewater treatment plant.
- Allow property taxes currently allocated to the District within the detachment area and used solely to fund sewer services to be reallocated to support property tax dependent governmental services such as law enforcement, fire prevention and protection and local parks and recreation to benefit the residents and landowners within the detachment area

who are also all City residents and landowners. Funding fee-supported services like sewer collection and disposal services from property taxes is not good public policy as it encourages overconsumption of the service and limited property tax dollars should be devoted to essential services to property which cannot be fee-funded, like police and fire services

INDEMNIFICATION AGREEMENT

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

Executed at _____, California, on the ____ day of _____, 2013.

APPLICANT City of Ukiah

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

Signature: _____

Signature: _____

Title: City Manager _____

Title: _____

SUBMITTALS – See the following notations

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

1. Two copies of this Justification of Proposal, completed and signed with original signatures; **Enclosed**
2. Five prints of a full-scale proposal map showing the affected territory and its relationship to the affected jurisdiction (and prepared to State Board of Equalization specifications); **Enclosed**
3. Five copies of an 8.5" x 11" or 11" x 17" reduction of the proposal map; **Enclosed**
4. Three copies of a metes and bounds description of the affected territory; **City will prepare metes and bounds maps of each of the blue areas to attach to his Commission's resolution of approval but that it doesn't want to spend the large amount of public money to prepare such maps and legal descriptions until the proposal is approved by the Commission.**
5. One certified copy of the City Council and/or Special District Board of Directors Resolution of Application; or a petition making application to LAFCo (as appropriate); **Enclosed**
6. Written permission from each affected property owner (or signature form); **Not provided; we do not have written consent of all property owners. Public hearing is necessary**
7. One copy of the project environmental document (One Compact Disc if more than 25 pages); **This detachment is exempt from CEQA – Class 20 which consists of changes of**

organization where the change does not change the geographical area in which previously existing powers are exercised.

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

CERTIFICATION

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

(Signature)

Date: _____

Print or Type Name: _____

Daytime Telephone: _____

EXHIBIT "T"

MENDOCINO

Local Agency Formation Commission

Ukiah Valley Conference Center ♦ 200 South School Street, Suite F ♦ Ukiah, California 95482
Telephone: 707-463-4470 Fax: 707-462-2088 E-mail: eo@mendolafco.org Web: www.mendolafco.org

CHAIR

Richard Shoemaker
Russian River Flood Control
And Water Conservation
Improvement District

VICE CHAIR

Carre Brown
County Board
Of Supervisors

MEMBERS

Doug Hammerstrom
Fort Bragg City Council

Michael Kisslinger
Public Member

Holly Madrigal
Willits City Council

John McCowen
County Board
Of Supervisors

Guinness McFadden
Potter Valley Irrigation District

ALTERNATE MEMBERS

Dan Hamburg
County Board
Of Supervisors

Mary Anne Landis
Ukiah City Council

Tony Orth
Brooktrails Township
Community Services District

Gerald Ward
Public Member

Executive Officer
George Williamson

Counsel
Scott Browne

Analyst
Colette Metz

Commission Clerk
Elizabeth Salomone

Regular Meetings
First Monday
of each month
At 9:00 AM
At the Mendocino
County Board
Of Supervisors Chambers
501 Low Gap Road

A G E N D A

Regular Meeting of Monday, December 1, 2014 9:00 AM
County Board of Supervisors Chambers 501 Low Gap Road, Ukiah, California

Call to Order and Roll Call

CONSENT CALENDAR

The following consent items are expected to be routine and non-controversial, and will be acted on by the Commission in a single action without discussion, unless a request is made by a Commissioner or a member of the public for discussion or separate action.

1. Approval of the November 3, 2014 Regular Meeting Summary Minutes
2. Approval of October 26 – November 25, 2014 Claims

PUBLIC EXPRESSION

3. The Commission welcomes participation in the LAFCo meeting. Any person may address the Commission on any subject within the jurisdiction of LAFCo which is not on the agenda. There is a three minute limit, and no action will be taken at this meeting.

MATTERS SET FOR HEARING

4. Mendocino County Water & Wastewater (1 District – CONTINUED)
Municipal Service Review (LAFCo File M-2013-04)

Presentation of the Public Review Draft of the Water & Wastewater MSR for Caspar South Water District. This document is available for review at www.mendolafco.org, click on 'Studies.' Comments and suggestions by the Commission, participating agencies and members of the public and possible adoption of the Final MSR.

5. City of Point Arena Municipal Service Review (LAFCo M-2012-02)

Presentation of the Public Hearing Review Draft of the City of Point Arena MSR. The document is available for review at www.mendolafco.org, click on 'Studies.' Comments and suggestions by the Commission, participating agencies and members of the public and possible authorization to publish Final MSR.

6. City of Willits Municipal Service Review (LAFCo M-2012-01)

The City of Willits has requested a continuation of the Public Hearing. Commission will open the public hearing, receive public comments, and continue the hearing to January 5, 2015.

(OVER)

WORKSHOP

7. **Mendocino County Fire Protection Districts (7 Districts) Municipal Service Review (LAFCo File M-2012-06)** Presentation of the Administrative Review Draft of the MSR for the following Fire Protection Districts:

**Hopland Fire Protection District
Leggett Valley Fire Protection District
Long Valley Fire Protection District
Valley-Calpella Fire Protection District**

**Covelo Fire Protection District
Little Lake Fire Protection District
Potter Valley Community Services District Redwood**

OTHER MATTERS FOR DISCUSSION & POSSIBLE ACTION

8. Monthly Financial Report
9. Guidance for Input on MSR and SOI Update for Commission Determination
10. Audit Status Update Report
11. 2015 Proposed Meeting Schedule
12. Status of Current and Future Proposals

OTHER ITEMS

13. Correspondence
14. Commissioner Reports, Comments or Questions
15. Executive Officer's Report
16. Legislation Report

ADJOURNMENT

The next Regular Commission Meeting is scheduled for
Monday, January 5 at 9:00 AM
in the County Board of Supervisors Chambers
501 Low Gap Road, Ukiah, California

Notes:

Participation on LAFCo Matters

All persons are invited to testify and submit written comments to the Commission on public hearing items. Any challenge to a LAFCo action in Court may be limited to issues raised at a public hearing or submitted as written comments prior to the close of the public hearing.

Americans with Disabilities Act (ADA) Compliance: If you are a disabled person and need a disability-related modification or accommodation to participate in a meeting, please contact the LAFCo office at 707-463-4470, by e-mail to eo@mendolafco.org, or by FAX to 707-462-2088. Requests must be made as early as possible, and at least two full business days prior to the meeting.

Fair Political Practice Commission (FPPC) Notice: State Law requires that a participant in LAFCo proceedings who has a financial interest in a Commission decision, and who has made a campaign contribution of more than \$250 to any Commissioner in the past 12-months, must disclose the contribution. If you are affected, please notify the Commission prior to the agenda item.

MENDOCINO Local Agency Formation Commission

Staff Report

DATE: December 1, 2014
TO: Mendocino Local Agency Formation Commission
FROM: George Williamson, Executive Officer
SUBJECT: Status of Current and Future Proposals

Following is a summary of active and future proposals.

Active Proposals

There are currently three (3) active applications on file with the Commission, as follows.

-City of Ukiah Sphere of Influence Update

The City of Ukiah has submitted an application for a SOI reduction to conform to the SOI delineated in the City's 1995 General Plan and in the Ukiah Valley Area Plan. On October 14, 2014, LAFCo as lead agency released a draft Initial Study (IS) and Mitigated Negative Declaration (MND) for a 30-day public review and comment period. Comments were received from the Ukiah Valley Fire District, the Mendocino County Planning and Building Services, Ukiah Valley Sanitation District; Law Offices of Duncan James; Mendocino County Farm Bureau; and Dan Thomas. LAFCo staff will be completing a final IS and MND that addresses substantive comments and will prepare a mitigation monitoring plan.

-City of Ukiah Detachment of Ukiah Valley Sanitation District (UVSD) Served Areas

The City of Ukiah has submitted a proposal, by resolution of application, for detachment of approximately 1,304 parcels located within the UVSD service area. The application was received on November 18, 2014. Staff will forward the application to referral agencies for review and comment, and will conduct a full review of the application for completeness within 30 days.

-Irish Beach County Water District Detachment

LAFCo has received a proposed detachment application by property owner petition on October 16, 2014. The application proposes detaching 60 acres of agriculture designated lands from the Irish Beach County Water District. Staff is conducting initial review of application completeness. Upon determination, staff will forward the application to referral agencies for review and comment.