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ENDORSED-FILED

OCT 18 2013

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA
JOHN LOZANO

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.

SC UK NO.: CV 6 '13 63024

COMPLAINT FOR DECLARATORY
RELIEF ON WRITTEN CONTRACT
(2 counts); BREACH OF CONTRACT
(3 counts); BREACH OF FIDUCIARY DUTY
(3 counts); RESCISSION AND
RESTITUTION (2 counts)

Plaintiff UKIAH VALLEY SANITATION DISTRICT, a Public Agency (hereinafter,
"District") alleges as follows:

1. DISTRICT is now, and at all times herein mentioned has been, a duly organized
Sanitation District, created and formed by the Board of Supervisors of Mendocino County,
California on or about July 6, 1954, pursuant to the County Sanitation District Act, California
Health & Safety Code § 4701, et. seq.

1 2. Defendant CITY OF UKIAH (hereinafter "City") is now, and at all times herein
2 mentioned has been, a General Law City located in the County of Mendocino, State of
3 California.

4 3. At the time the DISTRICT was created, its governing board was comprised of two
5 (2) Mendocino County Supervisors and one (1) City of Ukiah Council Person (hereinafter
6 collectively referred to as "dependent board").

7 4. On or about November 4, 2008, an election took place in the DISTRICT. As a
8 result of the election a new board was created which comprised of five (5) persons duly elected
9 by the voters who reside within the geographical boundaries of the DISTRICT and CITY
10 (hereinafter referred to as "independent board"). The first meeting of the INDEPENDENT
11 BOARD took place on December 11, 2008.

12 5. The true names and capacities, whether individual, corporate, associate or
13 otherwise, of defendants sued herein under the names of DOES I through 100, inclusive, are
14 unknown to plaintiffs at this time. Plaintiff sues said defendants by such fictitious names
15 pursuant to *Code of Civil Procedure* § 474 and will amend this Complaint to allege such
16 defendant, true names and capacities when ascertained.

17 6. At all times herein mentioned, defendants and each of them were the agents,
18 servants, and employees of the other defendants, and in doing the things alleged in this
19 Complaint, were each acting within the scope and authority of such agency with the knowledge
20 and consent or ratification of each of the other defendants.

21 7. At all times herein mentioned in this complaint, the reference to "ESSU" whether
22 in the singular or plural tense, is an acronym for "sewer service units" or "equivalent sewer
23 service units."
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DISTRICT-CITY AGREEMENTS

8. On or about June 29, 1955, DISTRICT and CITY entered into a written agreement (hereinafter "1955 AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit A".

9. On or about July 7, 1958, DISTRICT and CITY entered into a written agreement entitled "Supplemental Agreement" (hereinafter "1958 SUPPLEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit B".

10. On or about October 20, 1958, DISTRICT and CITY entered into a second written agreement entitled "Supplemental Agreement" (hereinafter "1958 AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit C".

11. On or about December 14, 1966, DISTRICT and CITY entered into a written agreement entitled "Third Supplemental Agreement" (hereinafter "1966 AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit D".

12. On or about February 6, 1985, Plaintiff and CITY entered into a written agreement entitled "Fourth Supplemental Agreement" (hereinafter "1985 AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit E".

13. On or about July 19, 1995, DISTRICT and CITY entered into a written agreement entitled "Participation Agreement Between The City of Ukiah And The Ukiah Valley Sanitation Agreement" (hereinafter "PARTICIPATION AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit F".

14. On or about October 16, 1996, DISTRICT and CITY entered into written agreement, entitled "Sewer Service Agreement" (hereinafter "SERVICE AGREEMENT"), a copy of which is attached hereto and incorporated herein by reference, marked "Exhibit G".

1 15. On or about March 24, 1999, DISTRICT and CITY entered into written
2 agreement entitled "Amendment No. 1 to the Participation Agreement between The City of
3 Ukiah and Ukiah Valley Sanitation District" (hereinafter "AMENDMENT # 1"), a copy of
4 which is attached hereto and incorporated herein by reference, marked "Exhibit H."

5 16. On or about December 15, 2004, DISTRICT and CITY entered into a written
6 agreement, entitled "Amendment No. 2 to Participation Agreement Between City of Ukiah and
7 Ukiah Valley Sanitation District" (hereinafter "AMENDMENT # 2"), a copy of which is
8 attached hereto and incorporated herein by this reference, marked "Exhibit I".

9 17. On or about March 2, 2006, DISTRICT and CITY entered into a written
10 agreement entitled "Financing Agreement" (hereinafter "FINANCING AGREEMENT"), a copy
11 of which is attached hereto and incorporated herein by this reference, marked "Exhibit J".
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14 CLAIM

15 18. On or about September 9, 2013, DISTRICT filed a claim with CITY, a copy of
16 which is attached hereto and incorporated herein by reference, marked "Exhibit K."

17 19. On or about October 7, 2013, CITY denied the claim as set forth in Exhibit K, a
18 copy of said denials are attached hereto and incorporated herein by reference, marked "Exhibit
19 L" and "Exhibit M."
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FIRST CAUSE OF ACTION
(Declaratory Relief)

COUNT I

(PARTICIPATION AGREEMENT (Exhibit F) as amended by
AMENDMENT # 1 (Exhibit H) and AMENDMENT # 2 (Exhibits I)

20. DISTRICT realleges and incorporates herein by reference, paragraph 1 through
19.

21. On July 19, 1995, the CITY and DISTRICT entered into the PARTICIPATION
AGREEMENT (Exhibit F), which was amended in 1999 (AMENDMENT # 1 (Exhibit H)) and
2004 (AMENDMENT # 2 (Exhibit I)).

22. The PARTICIPATION AGREEMENT (Exhibit F) provides in part as follows:

a. "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."

(PARTICIPATION AGREEMENT # 1, paragraph 1, page 1 (Exhibit F));

b. "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." (PARTICIPATION AGREEMENT, paragraph
1, page 1 (Exhibit F));

c. "CITY shall be the paying and receiving agent for all DISTRICT operation
and maintenance funds." (PARTICIPATION AGREEMENT, paragraph 1,
page 1 (Exhibit F));

- 1 d. "Cost apportionment between CITY and DISTRICT as described above shall
2 be adjusted annually at the beginning of each fiscal year of operation based
3 upon the ratio of CITY to DISTRICT equivalent sewer service units on record
4 as of March 31 each year." (PARTICIPATION AGREEMENT, paragraph 1,
5 page 1 (Exhibit F));
- 6 e. "CITY shall maintain and furnish personnel for the maintenance, operation
7 and control of the treatment plant." (PARTICIPATION AGREEMENT,
8 paragraph 3, page 2 (Exhibit F));
- 9 f. "To carry out the purpose of this Agreement, the Board of Directors of
10 DISTRICT and the City Council of CITY shall meet together at such times
11 and places as they shall agree, but in any event at least once a year beginning
12 with the effective date of this Agreement." (PARTICIPATION
13 AGREEMENT, paragraph 6, page 2 (Exhibit F));
- 14 g. "CITY shall operate, maintain and repair the DISTRICT'S sewage collection
15 system, including all sewer mains and laterals constructed within the
16 DISTRICT. CITY shall maintain the system in good repair [...]"
17 (PARTICIPATION AGREEMENT, paragraph 9, page 2 (Exhibit F));
- 18 h. "DISTRICT will establish such fees and charges as will be sufficient to
19 reimburse CITY for its actual costs of issuance of permits and costs of
20 inspection. CITY shall maintain full and complete accounting records on such
21 services, which will allow the review of such charges not less than once each
22 year so they may at all times reflect such actual costs." (PARTICIPATION
23 AGREEMENT, paragraph 12, page 3 (Exhibit F), emphasis added); and,
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- 1 i. "CITY will maintain complete records and accounts relating to costs and
2 expenditures made pursuant to or in connection with this Agreement, and of
3 all sewer service revenues which it may have collected." (PARTICIPATION
4 AGREEMENT, paragraph 13, page 3 (Exhibit F), emphasis added).

5 23. On March 24, 1999, DISTRICT and CITY amended the PARTICIPATION
6 AGREEMENT (Exhibit F) by entering into a written agreement, herein referred to as
7 AMENDMENT # 1 (Exhibit H). Said AMENDMENT # 1 (Exhibit H) only amended paragraphs
8 1 and 6 of the PARTICIPATION AGREEMENT (Exhibit F).

9 24. The PARTICIPATION AGREEMENT, paragraph 1 (Exhibit F), as amended by
10 AMENDMENT # 1 (Exhibit H), reads in part as follows:

- 11 a. Paragraph 1, first sentence, amended by adding the phrases "repair and
12 replacement" and "debt service". Said sentence thereafter read as follows:

13 "The annual costs for treatment, including maintenance, operation,
14 administration, repair and replacement, expansion, upgrading, debt
15 service, insurance and financial services of the entire sewer system
16 (treatment plant, trunk sewer and collection system) shall be apportioned
17 between the CITY and DISTRICT each year based upon the ratio of CITY
18 to DISTRICT sewer service units for each year of operation."

19 (AMENDMENT # 1, paragraph 1, first sentence (Exhibit H))

- 20 b. A new second sentence was added to paragraph 1, by AMENDMENT # 1
21 (Exhibit H), which has follows:

22 "Expense categories not included in a approved budget prior to the
23 1997/98 fiscal year must be authorized by a separate written agreement
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1 approved by both the CITY and DISTRICT, such an agreement shall be
2 required if any expense (1) is a capital expenditure in excess of \$100,000,
3 other than for repair or replacement of existing facilities or equipment, or
4 (2) involves a charge that can be lawfully imposed in either the City or the
5 unincorporated area but not in both the City and the unincorporated area.”

6 (AMENDMENT # 1, paragraph 1, second sentence (Exhibit H))

7 c. The third, fourth and fifth sentences of AMENDMENT # 1, paragraph 1
8 (Exhibit H) are a verbatim restatement of the remaining portion of paragraph 1
9 in the PARTICIPATION AGREEMENT (Exhibit F), and read as follows:

10 (1) “For the purpose of this agreement, one sewer unit is defined as being a
11 single unit of sewer discharge having characteristics of flow, B.O.D. and
12 suspended solids equivalent to that generated and discharged by a typical
13 single family residential unit” (AMENDMENT # 1, paragraph 1, third
14 sentence);

15 (2) “CITY shall be the paying and receiving agent for all DISTRICT
16 operation and maintenance funds.” (AMENDMENT # 1, paragraph 1,
17 fourth sentence); and,
18

19 (3) “Cost apportionment between CITY and DISTRICT as described above
20 shall be adjusted annually at the beginning of each fiscal year of operation
21 based upon the ratio of CITY to DISTRICT equivalent sewer service units
22 on record as of March 31 each year.” (AMENDMENT # 1, paragraph 1,
23 fifth sentence.)
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1 Paragraph 1 of the PARTICIPATION AGREEMENT (Exhibit F), as amended by
2 AMENDMENT # 1 (Exhibit H), remains in effect from March 24, 1999 to the date of the filing
3 of this complaint.

4 25. The PARTICIPATION AGREEMENT, paragraph 6 (Exhibit F), as amended by
5 AMENDMENT # 1 (Exhibit H), reads in part as follows:

6 a. "To carry out the purposes of this agreement, the Board of Directors of the
7 District and the City Council of the City of Ukiah shall meet together at such
8 times and places as they, shall agree, but in any event at least once a year,
9 prior to the commencement of the fiscal year (July 1 - June 30) for, among
10 other purposes, approval of the annual budget for the sewer system
11 operations" (AMENDMENT #1, paragraph 6, page 1 (Exhibit H)); and,
12

13 b. "The CITY shall prepare the proposed budget for the sewer system which
14 must receive approval from both the City Council and the Ukiah Valley
15 Sanitation District Board of Directors (AMENDMENT #1, paragraph 6.1,
16 page 1(Exhibit H)).

17 The above provisions of paragraph 6 of the PARTICIPATION AGREEMENT, as
18 amended by AMENDMENT # 1, remain in effect from March 24, 1999 to the date of the filing
19 of this complaint.

20 26. On December 15, 2004, DISTRICT and CITY amended the PARTICIPATION
21 AGREEMENT (Exhibit F) and AMENDMENT #1 (Exhibit H), by entering into another written
22 agreement, referred to herein as AMENDMENT # 2 (Exhibit I)).
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24 27. AMENDMENT # 2 (Exhibit I) reads in part as follows:

25 a. RECITALS:
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- 1 (1) "On July 19, 1995, the Parties entered an Amendment No. 1 to the
2 PARTICIPATION AGREEMENT (Exhibit F). That agreement affirms
3 that the annual costs for the entire sewer system (treatment plant, trunk
4 sewer and collection system of the CITY and the DISTRICT), including
5 maintenance, operation, administration, repair and replacement,
6 upgrading, debt service, insurance and financial services are allocated
7 between the CITY and the DISTRICT based upon the ratio of CITY and
8 DISTRICT sewer service units (ESSU's) for each year of operation.
9 'Sewer service unit' is defined in the PARTICIPATION AGREEMENT
10 (Exhibit F) and is referred to herein as 'Sewer service unit' or 'ESSU'."
11 (AMENDMENT #2, Recital 2, page 1(Exhibit I));
12
13 (2) The "Capacity Project" is described as "a project to increase the capacity
14 of the wastewater treatment plant to permit additional new connections in
15 both the District and the City." (AMENDMENT #2, Recital 7, page 2
16 (Exhibit I));
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18 (3) The "Upgrade/Rehabilitation Project" is described as "a project to
19 rehabilitate and upgrade the wastewater treatment plant" (AMENDMENT
20 #2, Recital 7, page 2 (Exhibit I));
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22 (4) The "Capacity Project" and "Upgrade/Rehabilitation Project are described
23 as collectively as "the Project" (AMENDMENT #2, Recital 7, page 2
24 (Exhibit I)); and,
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1 (5) "Increased Capacity" is the Capacity Projects "increase [in] the
2 wastewater treatment plant's capacity by an additional 2400 ESSU's"
3 (AMENDMENT # 2, Recital 8, page 2 (Exhibit I)).

4 b. AGREEMENT:

5 (1) "1. Allocation of ESSU's Prior to Completion of Project and of Increased
6 Capacity after Project Completion."

7 (a) "1.1. ESSU's During Interim Period. The ESSU's made available
8 through the use of the pre-treatment process recommended by Brown
9 and Caldwell shall be allocated as follows: 938 to the District; 442 to
10 the City" (AMENDMENT #2, Agreement, paragraph 1.1, page 2
11 (Exhibit I));

12
13 (b) "1.2. The [INCREASED CAPACITY]. The Increased Capacity shall
14 be allocated as follows: 65% to the DISTRICT; 35% to the CITY.
15 This allocation of Increased Capacity shall be subject to the same
16 review and opportunity for adjustment as is provided for the allocation
17 of Capacity Project costs under Section 2.1 of this Agreement."
18 (AMENDMENT #2, Agreement, paragraph 1.2, page 3 (Exhibit I),
19 emphasis added);

20
21 (c) "2. Allocation of the Project Costs. All of the costs of the Project
22 ("Project Costs"), including, but not limited to, planning, engineering,
23 design, design review, administration, construction, legal and
24 financing (including fees, financial services, transaction costs and debt
25 service) shall be allocated between the City and the District as
26

1 follows:" (AMENDMENT #2, Agreement, paragraph 2, page 3

2 (Exhibit I) , emphasis added):

3 i. "2.1. The Capacity Project.

4 (A) "35% of the Project Costs of the Capacity Project shall be paid

5 by the City and 65% of those Project Costs shall be paid by the

6 District. This allocation of Capacity Project Costs is based on

7 an estimate of the number of new Sewer service units that will

8 be needed in the City and in the District through the year

9 2020." (AMENDMENT #2, Agreement, paragraph 2.1, page 3

10 (Exhibit I), emphasis added):

11 (B) "The allocation of these costs shall be reviewed annually by the

12 Parties to insure that the cost sharing reflects the actual

13 proportion of new connections in the City and the District"

14 (AMENDMENT #2, Agreement, paragraph 2.1, page 3

15 (Exhibit I) , emphasis added); and,

16 (C) "Each year, commencing twelve months after the completion

17 of the Project, the Parties shall meet to conduct this review,

18 taking into account the number of new service connections

19 within each party during the previous twelve months, the total

20 number of new connections within each party's jurisdiction

21 since the Effective Date, the likely number of new connections

22 in the next one, three and five year time periods, any changes

23 in organization, including annexations or detachments, which

1 may have occurred, and any other facts or conditions the
2 Parties consider relevant. Based upon this review, the Parties
3 may adjust the allocation of these costs between them.”
4 (AMENDMENT #2, Agreement, paragraph 2.1, page 3
5 (Exhibit I), emphasis added).

6 (ii) “2.2. The Upgrade/Rehabilitation Project”:

7 (A) “The Project Costs of the Upgrade/Rehabilitation Project shall
8 be allocated between the City and the District based upon the
9 ratio of City and District ESSUs for each year of operation,
10 commencing in the year when Project Costs are first incurred,
11 as provided in the Participation Agreement.” (AMENDMENT
12 #2, Agreement, paragraph 2.2, page 3 (Exhibit I, emphasis
13 added).

14 (B) “Consistent with the Participation Agreement, these allocations
15 shall be calculated each year at the same time and in the same
16 manner as other costs allocated under Section 1 of the
17 Participation Agreement.” (AMENDMENT #2, Agreement,
18 paragraph 2.2, page 3 (Exhibit I).)

19 (d) “5. Effect on Participation Agreement. This Amendment No. 2
20 constitutes a second amendment to the Participation Agreement, and is
21 not intended to alter the terms of the Participation Agreement and
22 Amendment No. 1, except as expressly provided. Collectively the
23 Participation Agreement, Amendment No. 1 and Amendment No. 2,
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1 contain the entire agreement between the City and the District
2 concerning the wastewater treatment plant and the City's operation of
3 the sewer systems in the City and the District. These agreements
4 supercede and replace any other statements, agreements, or
5 understandings between the Parties concerning this subject matter.”

6 (AMENDMENT # 2, Agreement, paragraph 5, page 4 (Exhibit I))

7 28. On August 15, 2007, Gordon Elton, the Interim Finance Director acknowledged
8 the following:

9 “City and District customers are billed separately and the total sewer revenues are
10 collected and recorded in the joint operating fund. Revenues are identified by
11 City customers or District customers and operating expenses are identified as
12 combined expenses. By the nature of operating ‘one’ system, it is not feasible to
13 contemplate identifying operating expenses by City or District. Therefore the
14 expenses are allocated based on the ESSUs as mentioned above.”

15 29. An actual controversy has arisen and now exists between DISTRICT and CITY
16 regarding their respective rights and duties under the PARTICIPATION AGREEMENT,
17 AMENDMENT # 1, and AMENDMENT # 2 as follows:

18 a. Whether the CITY apportioned the annual costs for treatment, including
19 maintenance, operation, expansion, upgrading, administration, insurance and
20 financial services of the entire sewer system (treatment plant, trunk sewer, and
21 collection system) between the CITY and DISTRICT each year based upon
22 the ratio of CITY to DISTRICT sewer service units for each year of operation,
23 during the time period that the PARTICIPATION AGREEMENT (Exhibit F)
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1 was originally executed on July 19, 1995 until the execution of

2 AMENDMENT # 1 (Exhibit H) on March 24, 1999;

- 3 b. Whether the CITY apportioned the annual costs for treatment, including
- 4 maintenance, operation, administration, repair and replacement, expansion,
- 5 upgrading, debt service, insurance and financial services of the entire sewer
- 6 system (treatment plant, trunk sewer and collection system) shall be each year
- 7 based upon the ratio of CITY to DISTRICT sewer service units for each year
- 8 of operation, from the time period that the AMENDMENT # 1 (Exhibit H)
- 9 was originally executed on March 24, 1999 to the present;
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- 11 c. Whether the CITY maintained complete accounting records of the actual costs
- 12 for issuance of permits and inspections, which will allow the review of such
- 13 charges not less than once each year so they may at all times reflect such
- 14 actual costs;
- 15 d. Whether the CITY maintained complete records and accounts relating to costs
- 16 and expenditures of all sewer service revenues which it may have collected;
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- 18 e. Whether the CITY obtained authorization by a separate written agreement
- 19 approved by both the CITY and DISTRICT, of any expense (1) in excess of
- 20 \$100,000, other than for repair or replacement of existing facilities or
- 21 equipment, or (2) involves a charge that can be lawfully imposed in either the
- 22 CITY or the unincorporated area but not in both the CITY and the
- 23 unincorporated area;
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- 1 f. Whether the CITY calculated “a single sewer unit” of sewer discharge as
2 having the characteristics of flow, B.O.D. and suspended solids equivalent to
3 that generated and discharged by a typical single family residential unit;
- 4 g. Whether the CITY apportioned the annual costs for treatment, including
5 maintenance, operation, expansion, upgrading, administration, insurance and
6 financial services of the entire sewer system (treatment plant, trunk sewer, and
7 collection system) expansion, between the CITY and DISTRICT each year
8 based upon the ratio of CITY to DISTRICT sewer service units for each year
9 of operation as set forth in the PARTICIPATION AGREEMENT (Exhibit F)
10 as amended by AMENDMENT # 1 (Exhibit H) or based on water usage;
- 11 h. Whether the CITY apportioned the annual costs for treatment, including
12 maintenance, operation, expansion, upgrading, administration, insurance and
13 financial services of the entire sewer system (treatment plant, trunk sewer, and
14 collection system) expansion, between the CITY and DISTRICT each year
15 based upon the ratio of CITY to DISTRICT sewer service units for each year
16 of operation as set forth in the PARTICIPATION AGREEMENT (Exhibit F)
17 as amended by AMENDMENT # 1 (Exhibit H) or based on dividing the
18 amount billed by the monthly rate;
- 19 i. Whether CITY and DISTRICT customers are billed separately;
- 20 j. Whether the total sewer revenues are collected and recorded in the joint
21 operating fund and identified by City customer names or District customer
22 names;
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- 1 k. Whether CITY and DISTRICT operating expenses are identified as combined
2 expenses;
- 3 l. Whether CITY and DISTRICT operating expenses are separately identified;
- 4 m. Whether CITY and DISTRICT operating expenses are allocated based on
5 ESSU'S;
- 6 n. Whether the CITY had the contractual authority to charge the DISTRICT for
7 the use of the equipment on DISTRICT sewer projects, that was
8 proportionately purchased by the DISTRICT and CITY;
- 9 o. Whether the CITY failed to charge the CITY for use of the equipment, on
10 CITY sewer projects, that was proportionately purchased by the DISTRICT
11 and CITY;
- 12 p. Whether the CITY failed to charge the CITY Water Department or other
13 CITY agencies for use of equipment which the DISTRICT paid its
14 proportionate share of the purchase price;
- 15 q. Whether the CITY failed to reimburse the DISTRICT for the use of
16 equipment on CITY sewer, water, or other projects that was proportionately
17 purchased by the DISTRICT and CITY;
- 18 r. Whether the CITY had the contractual authority to charge the DISTRICT for
19 depreciation of assets that were proportionately purchased by DISTRICT;
- 20 s. Whether the CITY charged the CITY for depreciation of assets that were
21 proportionately purchased by the DISTRICT;
- 22 t. Whether the CITY as the paying and receiving agent for all DISTRICT
23 operation and maintenance funds breached their fiduciary duty to the
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1 DISTRICT, (PARTICIPATION AGREEMENT, paragraph 1, third sentence,
2 page 1 (Exhibit F); AMENDMENT # 1, paragraph 1, fourth sentence , page
3 1(Exhibit H));

4 u. Whether the cost apportionment between CITY and DISTRICT was adjusted
5 annually at the beginning of each fiscal year of operation based upon the ratio
6 of CITY to DISTRICT equivalent sewer service units on record as of March
7 31 each year.” (PARTICIPATION AGREEMENT, paragraph 1, fourth
8 sentence, page1 (Exhibit F); AMENDMENT #1, paragraph 1, fifth sentence,
9 page 1 (Exhibit H));

10 v. Whether the CITY apportioned the costs for the INCREASED CAPACITY
11 between the CITY and DISTRICT based upon the ratio of CITY and
12 DISTRICT ESSUs, to insure that the cost sharing reflects the actual
13 proportion of new connections in the CITY and DISTRICT, as provided in
14 AMENDMENT # 2 (AMENDMENT # 2 Agreement, sections 1.2 and 2.1,
15 page 3, emphasis added (Exhibit I));

16 w. Whether the cost apportionment for INCREASED CAPACITY was reviewed
17 each year by the CITY and DISTRICT to insure the cost sharing reflects the
18 actual proportion of new connections in the CITY and DISTRICT, as
19 provided in AMENDMENT # 2 (AMENDMENT # 2, Agreement, sections
20 1.2 and 2.1, page 3, emphasis added (Exhibit I));

21 x. Whether the CITY apportioned the PROJECT COSTS between the CITY and
22 DISTRICT based upon the ratio of CITY-DISTRICT ESSUs, to insure that
23 the cost sharing reflects the actual proportion of new connections in the CITY
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1 and DISTRICT, as provided in AMENDMENT # 2 (AMENDMENT # 2
2 Agreement, sections 1.2 and 2.1, page 3, emphasis added (Exhibit I));

3 y. Whether the apportionment of the PROJECT COSTS was reviewed each year
4 by the CITY and DISTRICT to insure the cost sharing reflects the actual
5 proportion of new connections in the CITY and DISTRICT, as provided in
6 AMENDMENT # 2 (AMENDMENT # 2, Agreement, sections 1.2 and 2.1,
7 page 3, emphasis added (Exhibit I));

8 z. Whether the CITY and DISTRICT met annually to review Cost
9 Apportionment taking into account:

- 10 (1) The number of new service connections within each party during the
11 previous twelve months;
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13 (2) The total number of new connections within each party's jurisdiction since
14 the Effective Date;
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16 (3) The likely number of new connections in the next one, three and five year
17 time periods;
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19 (4) Any changes in organization, including annexations or detachments;
20 which may have occurred; and,
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22 (5) Any other facts or conditions the CITY and DISTRICT consider relevant
23 (AMENDMENT # 2, Agreement, section 2.1, page 3 (Exhibit I)).

24 aa. Whether the PROJECT COSTS of the UPGRADE/REHABILITATION
25 PROJECT were:

- 26 (1) Being allocated between the CITY and DISTRICT based upon the ratio
of CITY and DISTRICT ESSUs for each year of operation, commencing

1 in the year when PROJECT COSTS are first incurred, as provided in the
2 PARTICIPATION AGREEMENT (AMENDMENT # 2, Agreement,
3 section 2.2, page 3 (Exhibit I));

4 (2) Being calculated each year at the same time and in the same manner as
5 other costs allocated under Section 1 of the PARTICIPATION
6 AGREEMENT (AMENDMENT # 2, Agreement, section 2.2, page 3
7 (Exhibit I)); and,

8 (3) Apportioned between the CITY and DISTRICT based upon the ratio of
9 CITY-DISTRICT ESSUs for each year of operation based upon the ratio
10 of CITY to DISTRICT equivalent sewer service units on record as of
11 March 31 each year (AMENDMENT # 2 Agreement, sections 1.2 and
12 2.1, page 3 (Exhibit I)).
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14 bb. Whether the CITY understated the total number of ESSU'S within that
15 portion of the CITY that is not included in the DISTRICT over-lap area;

16 cc. Whether the CITY overstated the total number of ESSU'S within the
17 DISTRICT, including that portion of the CITY which is included in the
18 DISTRICT over-lap area;

19 dd. Whether the CITY over charged the DISTRICT for work performed within
20 the DISTRICT, including that portion of the CITY which is included in the
21 DISTRICT over-lap area;

22 ee. Whether the CITY maintained complete records and accounts relating to costs
23 and expenditures for the sewer services separate from records and accounts
24 relating to other CITY services;
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- 1 ff. Whether the CITY comingled costs and expenses relating to other CITY
2 services for which DISTRICT has no financial obligation with costs and
3 expenses relating to the DISTRICT;
- 4 gg. Whether the CITY maintained separate records and accounts relating to costs
5 and expenditures incurred by the CITY for its water system and other CITY
6 services for which the DISTRICT has no financial obligation;
- 7 hh. Whether the CITY accepted reimbursement for engineering expenses for
8 sewer plant renovation and expansion and failed to distribute district share of
9 grant proceeds;
- 10 ii. Whether the CITY failed to hire and supervise a district engineer;
- 11 jj. Whether the CITY charged DISTRICT for fines imposed on the operation of
12 the CITY-DISTRICT sewer service system, as a result of CITY negligence in
13 reporting to North Coast Regional Water Control Board;
- 14 kk. Whether the CITY failed to disclose to DISTRICT reduced hook-up fees
15 charged businesses located within in the city limits;
- 16 ll. Whether the CITY failed to reimburse district for surplus equipment
17 transferred to other city departments;
- 18 mm. Whether the CITY failed to provide liability and performance insurance on
19 behalf of the DISTRICT;
- 20 nn. Whether the CITY failed to supervise the process of permit renewal and bid
21 for services for studies incorporated in the permit renewal allowing for non-
22 competitive bid acceptance;
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- 1 oo. Whether the CITY failed to make timely accountings of delinquent sewer
2 charges;
- 3 pp. Whether the CITY executed agreements with collection agencies for the
4 collection of delinquent district sewer charges without authority of district;
- 5 qq. Whether the CITY failed to provide accounting justifications for audit year
6 1995 through 2012;
- 7 rr. Whether the CITY failed to charge itself for use of (affluent generated by
8 government services) of sewer lines (city buildings and water department
9 discharges of well drilling fluids);
- 10 ss. Whether the CITY failed to provide an accounting of jointly owned vehicles
11 and equipment;
- 12 tt. Whether the CITY failed to charge itself for leachate from the solid waste
13 disposal facility (hereinafter "landfill"), located upon Assessor's Parcel
14 Number 178-130-01;
- 15 uu. Whether the CITY failed to collect fees for residential sewer service in
16 accordance with ordinance related to master meter service;
- 17 vv. Whether the CITY expended district revenue for services and costs not in the
18 approved joint budget items without authority of DISTRICT;
- 19 ww. Whether the CITY failed to deliver reports and studies for sewer
20 management to the DISTRICT that were paid for with joint CITY-DISTRICT
21 funds;
- 22 xx. Whether the CITY charged the DISTRICT for bond payments in excess of the
23 amount provided for in AMENDMENT #2;
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1 yy. Whether the CITY failed to maintain and deliver plans and specifications for
2 the DISTRICT sewer mains and laterals to DISTRICT; and,
3 zz. Whether the CITY failed to prepare and deliver required reports to North
4 Coast Regional Water in a timely and accurate manner.

5 30. DISTRICT desires a judicial determination of its rights and duties under the
6 PARTICIPATION AGREEMENT, AMENDMENT # 1, and AMENDMENT # 2, and a
7 declaration as to:

- 8 a. The CITY apportioning the annual costs for treatment, including
9 maintenance, operation, expansion, upgrading, administration, insurance and
10 financial services of the entire sewer system (treatment plant, trunk sewer, and
11 collection system) between the CITY and DISTRICT each year based upon
12 the ratio of CITY to DISTRICT sewer service units for each year of operation,
13 during the time period that the PARTICIPATION AGREEMENT (Exhibit F)
14 was originally executed on July 19, 1995 until the execution of
15 AMENDMENT # 1 (Exhibit H) on March 24, 1999;
16
17 b. The CITY apportioning the annual costs for treatment, including maintenance,
18 operation, administration, repair and replacement, expansion, upgrading, debt
19 service, insurance and financial services of the entire sewer system (treatment
20 plant, trunk sewer and collection system) shall be each year based upon the
21 ratio of CITY to DISTRICT sewer service units for each year of operation,
22 from the time period that the AMENDMENT # 1 (Exhibit H) was originally
23 executed on March 24, 1999 to the present;
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- 1 c. The CITY maintaining complete accounting records of the actual costs for
2 issuance of permits and inspections, which will allow the review of such
3 charges not less than once each year so they may at all times reflect such
4 actual costs;
- 5 d. The CITY maintaining complete records and accounts relating to costs and
6 expenditures of all sewer service revenues which it may have collected;
- 7 e. The CITY obtaining authorization by a separate written agreement approved
8 by both the CITY and DISTRICT, if any expense (1) is a capital expenditure
9 in excess of \$100,000, other than for repair or replacement of existing
10 facilities or equipment, or (2) involves a charge that can be lawfully imposed
11 in either the City or the unincorporated area but not in both the City and the
12 unincorporated area;
- 13 f. The CITY calculated "a single sewer unit" of sewer discharge as having the
14 characteristics of flow, B.O.D. and suspended solids equivalent to that
15 generated and discharged by a typical single family residential unit;
- 16 g. The CITY apportioned the annual costs for treatment, including
17 maintenance, operation, expansion, upgrading, administration, insurance and
18 financial services of the entire sewer system (treatment plant, trunk sewer, and
19 collection system) expansion, between the CITY and DISTRICT each year
20 based upon the ratio of CITY to DISTRICT sewer service units for each year
21 of operation as set forth in the PARTICIPATION AGREEMENT (Exhibit F),
22 as amended by AMENDMENT # 1 (Exhibit H) or based on water usage;
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- 1 h. The CITY apportioned the annual costs for treatment, including
2 maintenance, operation, expansion, upgrading, administration, insurance and
3 financial services of the entire sewer system (treatment plant, trunk sewer, and
4 collection system) expansion, between the CITY and DISTRICT each year
5 based upon the ratio of CITY to DISTRICT sewer service units for each year
6 of operation as set forth in the PARTICIPATION AGREEMENT (Exhibit F),
7 as amended by AMENDMENT # 1 (Exhibit H) or based on dividing the
8 amount billed by the monthly rate;
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10 i. The CITY and DISTRICT customers being billed separately;
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12 j. The total sewer revenues being collected and recorded in the joint operating
13 fund and identified by CITY customer names or DISTRICT customer names;
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15 k. The CITY and DISTRICT operating expenses being identified as combined
16 expenses;
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18 l. The CITY and DISTRICT operating expenses being separately identified;
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20 m. The CITY and DISTRICT operating expenses being allocated based on
21 ESSU'S;
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23 n. The CITY had the contractual authority to charge the DISTRICT for the use
24 of the equipment on DISTRICT sewer projects, that was proportionately
25 purchased by the DISTRICT and CITY;
26
o. The CITY failed to charge the CITY for use of the equipment, on CITY sewer
projects, that was proportionately purchased by the DISTRICT and CITY;

- 1 p. The CITY failed to charge the CITY Water Department or other CITY
2 agencies for use of equipment which the DISTRICT paid its proportionate
3 share of the purchase;
- 4 q. The CITY failed to reimburse the DISTRICT for the use of equipment on
5 CITY sewer, water, or other projects that was proportionately purchased by
6 the DISTRICT and CITY;
- 7 r. The CITY having the contractual authority to charge the DISTRICT for
8 depreciation of assets that were proportionately purchased by DISTRICT;
- 9 s. The CITY charging the CITY for depreciation of assets that were
10 proportionately purchased by the DISTRICT;
- 11 t. The CITY being paying and receiving agent for all DISTRICT operation and
12 maintenance funds (PARTICIPATION AGREEMENT, paragraph 1, third
13 sentence, page 1 (Exhibit F); AMENDMENT # 1, paragraph 1, fourth
14 sentence, page 1(Exhibit H).);
- 15 u. Cost apportionment between CITY and DISTRICT being adjusted annually
16 based upon the ratio of CITY-DISTRICT equivalent sewer service units on
17 record as of March 31 each year. (PARTICIPATION AGREEMENT,
18 paragraph 1, fourth sentence, page1 (Exhibit F); AMENDMENT #1,
19 paragraph 1, fifth sentence, page 1 (Exhibit H).).
- 20 v. The CITY apportioning the costs for the INCREASED CAPACITY between
21 the CITY and DISTRICT based upon the ratio of CITY-DISTRICT ESSUs, to
22 insure that the cost sharing reflects the actual proportion of new connections
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1 in the CITY and DISTRICT, as provided in AMENDMENT # 2

2 (AMENDMENT # 2 Agreement, sections 1.2 and 2.1, page 3 (Exhibit I));

3 w. The apportionment for INCREASED CAPACITY being reviewed each year
4 by the CITY and DISTRICT to insure the cost sharing reflects the actual
5 proportion of new connections in the CITY and DISTRICT, as provided in
6 AMENDMENT # 2 (AMENDMENT # 2, Agreement, paragraph s 1.2 and
7 2.1, page 3 (Exhibit I));

8 x. The CITY apportioning the PROJECT COSTS between the CITY and
9 DISTRICT based upon the ratio of CITY-DISTRICT ESSUs, to insure that
10 the cost sharing reflects the actual proportion of new connections in the CITY
11 and DISTRICT, as provided in AMENDMENT # 2 (AMENDMENT # 2
12 Agreement, sections 1.2 and 2.1, page 3 (Exhibit I));

13 y. The apportionment of the PROJECT COSTS being reviewed each year by the
14 CITY and DISTRICT to insure the cost sharing reflects the actual proportion
15 of new connections in the CITY and DISTRICT, as provided in
16 AMENDMENT # 2 (AMENDMENT # 2, Agreement, paragraphs 1.2 and 2.1,
17 page 3 (Exhibit I));

18 z. The CITY and DISTRICT meeting annually to review Cost Apportionment
19 taking into account:

20 (1) The number of new service connections within each party during the
21 previous twelve months;

22 (2) The total number of new connections within each party's jurisdiction since
23 the Effective Date;

1 (3) The likely number of new connections in the next one, three and five year
2 time periods;

3 (4) Any changes in organization, including annexations or detachments;
4 which may have occurred; and,

5 (5) Any other facts or conditions the CITY and DISTRICT consider relevant
6 (AMENDMENT # 2, Agreement, section 2.1, page 3 (Exhibit I)).

7 aa. The PROJECT COSTS of the UPGRADE/REHABILITATION PROJECT:

8 (1) Being allocated between the CITY and DISTRICT based upon the ratio of
9 CITY and DISTRICT ESSUs for each year of operation, commencing in
10 the year when PROJECT COSTS are first incurred, as provided in the
11 PARTICIPATION AGREEMENT (AMENDMENT # 2, Agreement,
12 section 2.2, page 3 (Exhibit I));

13 (2) Being calculated each year at the same time and in the same manner as
14 other costs allocated under Section 1 of the PARTICIPATION
15 AGREEMENT (AMENDMENT # 2, Agreement, section 2.2, page 3
16 (Exhibit I)); and,

17 (3) Being apportioned between the CITY and DISTRICT based upon the ratio
18 of CITY-DISTRICT ESSUs for each year of operation based upon the
19 ratio of CITY to DISTRICT equivalent sewer service units on record as of
20 March 31 each year (AMENDMENT # 2 Agreement, sections 1.2 and 2.1,
21 page 3 (Exhibit I)).

22 bb. The CITY understating the total number of ESSU'S within that portion of the
23 CITY that is not included in the over-lap area;

- 1 cc. The CITY overstating the total number of ESSU'S within the DISTRICT,
2 including that portion of the CITY which is included in the over-lap area;
- 3 dd. The CITY over charging the DISTRICT for work performed within the
4 DISTRICT, including that portion of the CITY which is included in the
5 DISTRICT over-lap area;
- 6 ee. The CITY maintaining incomplete records and accounts relating to costs and
7 expenditures for the sewer services separate from records and accounts
8 relating to other CITY services;
- 9 ff. The CITY comingling costs and expenses relating to other CITY services for
10 which DISTRICT has no financial obligation with costs and expenses relating
11 to the DISTRICT; and,
- 12 gg. The CITY not maintaining separate records and accounts relating to costs and
13 expenditures incurred by the CITY for its water system and other CITY
14 services for which the DISTRICT has no financial obligation;
- 15 hh. The CITY accepting reimbursement for engineering expenses for sewer plant
16 renovation and expansion and failed to distribute district share of grant
17 proceeds;
- 18 ii. The CITY failing to hire and supervise a district engineer;
- 19 jj. The CITY charged the DISTRICT for fines imposed on the operation of the
20 CITY-DISTRICT sewer service system, as a result of CITY negligence in
21 reporting to North Coast Regional Water Control Board;
- 22 kk. The CITY failing to disclose to DISTRICT reduced hook-up fees charged
23 businesses located within in the city limits;
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- 1 ll. The CITY failing to reimburse district for surplus equipment transferred to
2 other city departments ["CITY shall be the paying and receiving agent for all
3 DISTRICT operation and maintenance funds";
- 4 mm. The CITY failing to provide liability and performance insurance on behalf of
5 the district;
- 6 nn. The CITY failing to supervise the process of permit renewal and bid for
7 services for studies incorporated in the permit renewal allowing for non-
8 competitive bid acceptance;
- 9 oo. The CITY failing to make timely accountings of delinquent sewer charges;
- 10 pp. The CITY executing agreements with collection agencies for the collection of
11 delinquent DISTRICT sewer charges without authority of DISTRICT;
- 12 qq. The CITY failing to provide accounting justifications for audit years 1995
13 through 2012;
- 14 rr. The CITY failing to charge itself for use of (affluent generated by government
15 services) of sewer lines (city buildings and water department discharges of
16 well drilling fluids);
- 17 ss. The CITY failing to provide an accounting of jointly owned vehicles and
18 equipment;
- 19 tt. Whether the CITY failed to charge and collect from CITY for leachate from
20 the solid waste disposal facility (hereinafter "landfill"), located upon
21 Assessor's Parcel Number 178-130-01;
- 22 uu. The CITY failing to collect fees for residential sewer service in accordance
23 with ordinance related to master meter service;
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- 1 vv. The CITY expending district revenue for services and costs not in the
2 approved joint budget items without authority of district;
3 ww. The CITY failing to deliver reports and studies for sewer management to the
4 DISTRICT that were paid for with joint CITY-DISTRICT funds;
5 xx. The CITY failing charging the district for bond payments in excess of the
6 amount provided for in AMENDMENT #2;
7 yy. The CITY failing to maintain and deliver plans and specifications for the
8 DISTRICT sewer mains and laterals; and,
9 zz. The CITY failing to prepare and deliver required reports to North Coast
10 Regional Water in a timely and accurate manner.
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12 31. A judicial declaration is necessary and appropriate at this time so that DISTRICT
13 may determine its rights and duties under the PARTICIPATION AGREEMENT (Exhibit F) as
14 amended by AMENDMENTS #1 and # 2 (Exhibits H and I).

15 32. Because the PARTICIPATION AGREEMENT (Exhibit F) and AMENDMENTS
16 #1 and # 2 (Exhibits H and I), are ongoing and the interpretations by the CITY are likely to
17 reoccur from year to year, a judicial interpretation as to the same will avoid future disputes
18 between the parties on the same subject matter, separate and apart from an application for
19 damage for completed breaches of the Agreements as hereinafter set forth and as incorporated
20 herein by reference.
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COUNT II

(Declaratory Relief - FINANCING AGREEMENT (Exhibit J))

33. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through 7; paragraphs 13 through 19; and, paragraphs 21 through 32.

34. On or about March 2, 2006, DISTRICT and CITY entered into the FINANCING AGREEMENT (Exhibit J) in order to finance improvements to the waste water treatment plant and DISTRICT agreed to pay its share of the 2006 Water and Wastewater Revenue Bonds, Series A, in the aggregate principal amount of \$75,060,000 (FINANCING AGREEMENT, Background, paragraphs 4 and 5, page 1 (Exhibit J)). Said FINANCING AGREEMENT defines "Participation Agreement" as including "Amendment # 1" and "Amendment # 2." (FINANCING AGREEMENT, Background, paragraph 2, page 1 (Exhibit J))

35. The CITY and DISTRICT entered into the FINANCING AGREEMENT (Exhibit J) for the purpose of securing a portion of the financing costs which are allocable to the DISTRICT in accordance with the Participation Agreement (Exhibits F, H & I), in the same manner in which the CITY'S allocable share of such financing costs is secured under the Installment Sale Agreement (FINANCING AGREEMENT, Background, paragraph 6, page 1 (Exhibit J))

36. The FINANCING AGREEMENT (Exhibit J) provides:

- a. "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 payments are referred to as the 'District Payments'." (FINANCING AGREEMENT, Agreement, section 1, page 2 (Exhibit J));

1 b. "The District will fix, prescribe and revise rates connection fees and other fees
2 and charges for the services and facilities furnished by the District's portion of
3 the Wastewater System during each fiscal year of the District. [...] All such
4 revenues will be collected by the City in accordance with the Participation
5 Agreement, and the City will apply such revenues to pay the District
6 Payments on behalf of the District." (FINANCING AGREEMENT,
7 Agreement, section 2, page 2 (Exhibit J));

8 c. "The District has the right at any time to establish a Rate Stabilization Fund to
9 be held by it or by the City and administered in accordance with this Section
10 3, for the purpose of stabilizing the rates and charges imposed by the District
11 with respect to the Wastewater System. From time to time the District may
12 deposit amounts in the Rate Stabilization Fund, from any source of legally
13 available funds, as the District may determine." (FINANCING
14 AGREEMENT, Agreement, section 3, first paragraph, page 2 (Exhibit J));
15 and,
16

17 d. "The District may, but is not be required to, withdraw from any amounts on
18 deposit in the Rate Stabilization Fund and transfer such amounts to the City in
19 any fiscal year for the purpose of paying any portion of the District Payments
20 coming due and payable in such fiscal year. Amounts on deposit in a Rate
21 Stabilization Fund are not pledged to and do not secure the District Payments.
22 All interest or other earnings on deposits in the Rate Stabilization Fund will be
23 retained therein or, at the option of the District, be applied for any other lawful
24 purposes. The District may at any time withdraw any or all amounts on
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1 deposit in the Rate Stabilization Fund and apply such amounts for any other
2 lawful purposes of the District.” (FINANCING AGREEMENT, Agreement,
3 section 3, second paragraph, page 2 (Exhibit J).)

4 37. An actual controversy has arisen and now exists between the DISTRICT and the
5 CITY regarding their respective rights and duties under the FINANCING AGREEMENT
6 (Exhibit J) , as it applies to:

- 7 a. Whether the CITY apportioned the annual costs treatment, including
8 maintenance, operation, administration, repair and replacement, expansion,
9 upgrading, debt service, insurance and financial services of the entire sewer
10 system (treatment plant, trunk sewer and collection system) each year based
11 upon the ratio of CITY to DISTRICT sewer service units for each year of
12 operation;
- 13 b. Whether the CITY apportioned the Installment Payments to the DISTRICT
14 under and in accordance with the procedures and methodology set forth in the
15 PARTICIPATION AGREEMENT, as amended ;;
- 16 c. Whether the CITY collected all DISTRICT connection fees and other fees and
17 charges, for the services and facilities furnished by the DISTRICT'S portion
18 of the Wastewater System during each fiscal year, less all other costs
19 apportioned to the DISTRICT for the operation, maintenance and repair of the
20 DISTRICT'S portion of the Wastewater System, in accordance with the
21 PARTICIPATION AGREEMENT, as amended, and applied such revenues to
22 pay the DISTRICT PAYMENTS on behalf of the DISTRICT;
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- 1 d. Whether the CITY paid its share of the costs of improvements to the waste
2 water treatment plant pursuant to the terms and conditions of the
3 FINANCING AGREEMENT;
- 4 e. Whether the CITY over-charged the DISTRICT for Installment Payments due
5 under the FINANCING AGREEMENT (Exhibit J) because the CITY failed to
6 correctly calculate the number of ESSU'S in the DISTRICT and CITY, based
7 upon the ratio of CITY-DISTRICT equivalent sewer service units (ESSU'S);
- 8 f. Whether the CITY maintained complete records and accounts relating to costs
9 and expenditures of all sewer service revenue which it may have collected ;
- 10 g. Whether the CITY accurately accounted to the DISTRICT for all revenue
11 collected pursuant to the FINANCING AGREEMENT (Exhibit J);
- 12 h. Whether the cost apportionment between CITY and DISTRICT was "adjusted
13 annually at the beginning of each fiscal year of operation based upon the ratio
14 of CITY to DISTRICT equivalent sewer service units on record as of March
15 31 each year";
- 16 i. Whether the CITY apportioned the costs for the INCREASED CAPACITY
17 between the CITY and DISTRICT based upon the ratio of CITY and
18 DISTRICT ESSUs, to insure that the cost sharing reflects the actual
19 proportion of new connections in the CITY and DISTRICT, as provided in
20 AMENDMENT # 2;
- 21 j. Whether the cost apportionment for INCREASED CAPACITY was reviewed
22 each year by the CITY and DISTRICT to insure the cost sharing reflects the
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1 actual proportion of new connections in the CITY and DISTRICT, as
2 provided in AMENDMENT # 2;

3 k. Whether the CITY apportioned the PROJECT COSTS between the CITY and
4 DISTRICT based upon the ratio of CITY-DISTRICT ESSUs, to insure that
5 the cost sharing reflects the actual proportion of new connections in the CITY
6 and DISTRICT, as provided in AMENDMENT # 2;

7 l. Whether the apportionment of the PROJECT COSTS was reviewed each year
8 by the CITY and DISTRICT to insure the cost sharing reflects the actual
9 proportion of new connections in the CITY and DISTRICT, as provided in
10 AMENDMENT # 2;

11 m. Whether the CITY and DISTRICT met annually to review Cost

12 Apportionment taking into account:

13 (1) The number of new service connections within each party during the
14 previous twelve months;

15 (2) The total number of new connections within each party's jurisdiction since
16 the Effective Date;

17 (3) The likely number of new connections in the next one, three and five year
18 time periods;

19 (4) Any changes in organization, including annexations or detachments;
20 which may have occurred; and,

21 (5) Any other facts or conditions the CITY and DISTRICT consider relevant
22 (AMENDMENT # 2, Agreement, section 2.1, page 3 (Exhibit I)).
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1 n. Whether the PROJECT COSTS of the UPGRADE/REHABILITATION
2 PROJECT were:

3 (1) Being allocated between the CITY and DISTRICT based upon the ratio of
4 CITY and DISTRICT ESSUs for each year of operation, commencing in
5 the year when PROJECT COSTS are first incurred, as provided in the
6 PARTICIPATION AGREEMENT;

7 (2) Being calculated each year at the same time and in the same manner as
8 other costs allocated under Section 1 of the PARTICIPATION
9 AGREEMENT; and,

10 (3) Apportioned between the CITY and DISTRICT based upon the ratio of
11 CITY-DISTRICT ESSUs for each year of operation based upon the ratio
12 of CITY to DISTRICT equivalent sewer service' units on record as of
13 March 31 each year;

14
15 o. Whether the DISTRICT has funds held by CITY in a Rate Stabilization Fund
16 (FINANCING AGREEMENT, Agreement, section 3, page 2 (Exhibit I));

17 p. Whether the amounts on deposit in the Rate Stabilization Fund are not
18 pledged to and do not secure the DISTRICT Payments (FINANCING
19 AGREEMENT, Agreement, section 3, page 2 (Exhibit I));and,

20 q. Whether the CITY, after being requested to do so by the DISTRICT, refused
21 to transfer all fund held in the Rate Stabilization Fund to the Mendocino
22 County Auditor (FINANCING AGREEMENT, Agreement, section 3, page 2
23 (Exhibit I)).
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1 38. DISTRICT desires a judicial determination of its rights and duties under the
2 agreements and a declaration as to:

- 3 a. The CITY apportioning the annual costs treatment, including maintenance,
4 operation, administration, repair and replacement, expansion, upgrading, debt
5 service, insurance and financial services of the entire sewer system (treatment
6 plant, trunk sewer and collection system) each year based upon the ratio of
7 CITY to DISTRICT sewer service units for each year of operation;
8
9 b. The CITY apportioning the Installment Payments to the DISTRICT under and
10 in accordance with the procedures and methodology set forth in the
11 PARTICIPATION AGREEMENT, as amended (Exhibits F, H, I);
12 c. The CITY collecting all DISTRICT connection fees and other fees and
13 charges, for the services and facilities furnished by the DISTRICT'S portion
14 of the Wastewater System during each fiscal year, less all other costs
15 apportioned to the DISTRICT for the operation, maintenance and repair of the
16 DISTRICT'S portion of the Wastewater System, in accordance with the
17 PARTICIPATION AGREEMENT, as amended (Exhibits F, H, I) and applied
18 such revenues to pay the DISTRICT PAYMENTS on behalf of the
19 DISTRICT;
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21 d. The CITY paying its share of the costs of improvements to the waste water
22 treatment plant pursuant to the terms and conditions of the FINANCING
23 AGREEMENT (Exhibit J)
24 e. The CITY over-charging the DISTRICT for Installment Payments due under
25 the FINANCING AGREEMENT (Exhibit J) because the CITY failed to
26

- 1 correctly calculate the number of ESSU'S in the DISTRICT and CITY, based
2 upon the ratio of CITY-DISTRICT equivalent sewer service units (ESSU'S);
- 3 f. The CITY maintaining complete records and accounts relating to costs and
4 expenditures of all sewer service revenue which it may have collected;
- 5 g. The CITY accurately accounting to the DISTRICT for all revenue collected
6 pursuant to the FINANCING AGREEMENT (Exhibit J) and the
7 PARTICIPATION AGREEMENT (Exhibits F, H and I);
- 8 h. Cost apportionment between CITY and DISTRICT being adjusted annually at
9 the beginning of each fiscal year of operation based upon the ratio of CITY to
10 DISTRICT equivalent sewer service units on record as of March 31 each
11 year";
- 12 i. The CITY apportioning the costs for the INCREASED CAPACITY between
13 the CITY and DISTRICT based upon the ratio of CITY and DISTRICT
14 ESSUs, to insure that the cost sharing reflects the actual proportion of new
15 connections in the CITY and DISTRICT, as provided in AMENDMENT # 2;
- 16 j. Cost apportionment for INCREASED CAPACITY being reviewed each year
17 by the CITY and DISTRICT to insure the cost sharing reflects the actual
18 proportion of new connections in the CITY and DISTRICT, as provided in
19 AMENDMENT # 2;
- 20 k. The CITY apportioning the PROJECT COSTS between the CITY and
21 DISTRICT based upon the ratio of CITY-DISTRICT ESSUs, to insure that
22 the cost sharing reflects the actual proportion of new connections in the CITY
23 and DISTRICT, as provided in AMENDMENT # 2;
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1 l. The apportionment of the PROJECT COSTS being reviewed each year by the
2 CITY and DISTRICT to insure the cost sharing reflects the actual proportion
3 of new connections in the CITY and DISTRICT, as provided in
4 AMENDMENT # 2;

5 m. The CITY and DISTRICT meeting annually to review Cost Apportionment
6 taking into account:

7 (1) The number of new service connections within each party during the
8 previous twelve months;

9 (2) The total number of new connections within each party's jurisdiction since
10 the Effective Date;

11 (3) The likely number of new connections in the next one, three and five year
12 time periods;

13 (4) Any changes in organization, including annexations or detachments;
14 which may have occurred; and,

15 (5) Any other facts or conditions the CITY and DISTRICT consider relevant.

16 n. The PROJECT COSTS of the UPGRADE/REHABILITATION PROJECT:

17 (1) Being allocated between the CITY and DISTRICT based upon the ratio of
18 CITY and DISTRICT ESSUs for each year of operation, commencing in
19 the year when PROJECT COSTS are first incurred, as provided in the
20 PARTICIPATION AGREEMENT;

21 (2) Being calculated each year at the same time and in the same manner as
22 other costs allocated under Section 1 of the PARTICIPATION
23 AGREEMENT; and,
24 AGREEMENT; and,
25 AGREEMENT; and,
26

- 1 o. Apportioned between the CITY and DISTRICT based upon the ratio of CITY-
2 DISTRICT ESSUs for each year of operation based upon the ratio of CITY to
3 DISTRICT equivalent sewer service' units on record as of March 31 each
4 year;
5 p. The DISTRICT has funds held by CITY in a Rate Stabilization Fund;
6 q. The amounts on deposit in the Rate Stabilization Fund are not pledged to and
7 do not secure the DISTRICT Payments;
8 r. The CITY, after being requested to do so by the DISTRICT, refused to
9 transfer all fund held in the Rate Stabilization Fund to the Mendocino County
10 Auditor.

11
12 39. A judicial declaration is necessary and appropriate at this time under all of the
13 circumstances so that DISTRICT may determine its rights and duties under the FINANCING
14 AGREEMENT (Exhibit J).

15 40. Because the FINANCING AGREEMENT (Exhibit J) is ongoing and the
16 interpretations by the CITY are likely to reoccur from year to year, a judicial interpretation as to
17 the same will avoid future disputes between the parties on the same subject matter, separate and
18 apart from an application for damage for completed breaches of the Agreements incorporated
19 herein by reference (Exhibits F, H, I and J).

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SECOND CAUSE OF ACTION
(Breach of Contract)

COUNT I

(1955 AGREEMENT (Exhibit A), as amended by the 1958 AGREEMENT (Exhibit C),
1966 AGREEMENT (Exhibit D) and 1985 AGREEMENT (Exhibit E))

41. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through
12; and, paragraphs 18 and 19.

42. On or about June 29, 1955, DISTRICT and CITY entered into the 1955
AGREEMENT (Exhibit A). Paragraph 4 of said 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.” (1955 AGREEMENT, paragraph 4, page 2,
(Exhibit A)

43. On or about October 20, 1958, DISTRICT and CITY entered into the 1958
AGREEMENT (Exhibit C), which added paragraphs 11 through 19 to the 1955 AGREEMENT
(Exhibit A). The 1958 AGREEMENT (Exhibit C), provided in part as follows:

- a. “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” (1958
AGREEMENT, paragraph 16, page 2 (Exhibit C));
- b. “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

1 agreement” (1958 AGREEMENT, paragraph 17, page 2, emphasis added
2 (Exhibit C)); and,

- 3 c. “The City will maintain complete records and accounts relating to costs and
4 expenditures made pursuant to, or in connection with, this agreement and of
5 all sewer service charge revenues which it may have collected for and on
6 behalf of the District and it will make reports thereof to the District monthly
7 or semi-monthly, in accordance with the billing period which may be
8 established by the City” (1958 AGREEMENT, paragraph 18, page 2,
9 emphasis added (Exhibit C)).

10 44. On December 14, 1966, the DISTRICT and CITY entered into the 1966
11 AGREEMENT (Exhibit D). The Recitals stated in part:

- 12 a. “The parties hereto have by contract dated June 29, 1955, as amended by
13 supplemental agreements dated July 7, 1958 and October 20, 1958, provided
14 for the construction, operation and maintenance of sewage disposal facilities
15 consisting of a treatment plant and trunk sewer lines as a joint project, and for
16 maintenance, operation and repair of DISTRICT lines and laterals by CITY
17 under certain terms, and for collection of fees and charges by CITY for
18 DISTRICT, and for other services to be performed for DISTRICT by CITY,
19 all as set forth in said contract and the supplements thereto” (1966
20 AGREEMENT, Recitals, first paragraph, page 1 (Exhibit D)); and,
21
22 b. “Whereas, the parties desire to continue such joint parties participation but to
23 modify certain charges and methods of apportioning payments so as to more
24 accurately reflect the original intent of the parties to provide an equitable
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26

1 apportionment of costs and to provide for future adjustments when necessary,
2 all in accordance with the terms herein expressed.” (1966 AGREEMENT,
3 Recitals, second paragraph, page 1 (Exhibit D))

4 45. The 1966 AGREEMENT (Exhibit D) amended paragraph 4 of the 1955
5 AGREEMENT (Exhibit A) and paragraph 16 of the 1958 AGREEMENT (Exhibit C) as follows:

6 a. “Paragraph 4 of the agreement dated June 29, 1955 is amended to read as
7 follows:

8 ‘4. Annual costs for treatment, including maintenance, expansion, and
9 operation of the treatment plant and trunk sewer shall be apportioned between
10 the CITY and DISTRICT in each year based upon the projected ratio of
11 CITY-DISTRICT sewer connections for each year of operation from and after
12 January 1, 1967 as set forth in the projection prepared by Brown and
13 Caldwell, Consulting Engineers and contained in the City of Ukiah Prospectus
14 for \$800,000 Sewer Revenue Bonds of 1357 at page 16, column 6, with CITY
15 to bear that percentage of such total costs as is set forth in said column 6 of
16 such projection, and DISTRICT to bear that percentage of such total costs as
17 [re]presents the difference between the amount set forth in column 6 of such
18 projection and the total of one hundred per cent (100%).

19
20 The parties agree to annually review the actual ratio of sewer connections
21 as compared to the projection, and to adjust the cost apportionment whenever
22 the actual ratio deviates by more than 10% from the projected ratio.

23
24 Replacement and repair of said treatment plant shall be created as capital
25 outlay, and the DISTRICT shall not be charged with amortization of said
26

1 treatment plant.' ” (1966 AGREEMENT, paragraph 4, pages 1-2, emphasis
2 added (Exhibit D)).

3 b. “Paragraph 16 of the Agreement added by the Supplemental Agreement dated
4 October 20, 1958 is amended to read as follows:

5 ‘16. The City shall receive as payment for any billing or collection
6 services it may render for and on behalf of the District a sum which shall
7 equal twenty per cent (20%) of the amounts so billed for sewer service
8 charges.” (1966 AGREEMENT, paragraph 3, page 2 (Exhibit D), emphasis
9 added.).”

10 46. On or about February 6, 1985, DISTRICT and CITY entered into the 1985
11 AGREEMENT (Exhibit E) which amended: paragraph 4 of the 1955 AGREEMENT (Exhibit
12 A), as amended by the 1966 AGREEMENT (Exhibit D); and, paragraph 16 of the 1966
13 AGREEMENT (Exhibit D) as follows.

14 a. “Paragraph 4 of the agreement dated June 29, 1955 as amended in the Third
15 Supplemental Agreement dated December 14, 1966 is further to read as
16 amended to read as follows:

17 ‘4. Annual costs for treatment, including maintenance, operation,
18 expansion, upgrading, administration, and financial services of the entire
19 sewage system (treatment plant, trunk sewer, and collection system) shall be
20 apportioned between the CITY and DISTRICT in each year based upon the
21 ratio of CITY-DISTRICT sewer service units for each year of operation from
22 and after July 1, 1985. “For the purposes of this Agreement, one sewer
23 service unit is defined as being a single unit of sewer discharge having
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1 characteristics of flow, B.O.D. and suspended solids equivalent to that
2 generated and discharged by a typical single family residential unit. The CITY
3 shall be the paying and receiving agent for all DISTRICT operation and
4 maintenance funds.

5 Cost apportionment between CITY and DISTRICT shall be adjusted
6 annually at the beginning of each fiscal year of operation based upon the ratio
7 of CITY-DISTRICT equivalent sewer service units on record as of March 31
8 each year” (1985 AGREEMENT, paragraph 1, pages 1-2 (Exhibit E) ,
9 emphasis added);

10
11 b. “Paragraph 16 of the Agreement dated June 29, 1955 [sic] as amended by the
12 Supplemental Agreement Dated December 14, 1966, is hereby deleted.” (1985
13 AGREEMENT, paragraph 2, page 2 (Exhibit E))

14 47. Subsequent to the execution of the 1955 AGREEMENT (Exhibit A), CITY
15 breached the 1955 AGREEMENT, and each of the amendments thereto, as follows:

16 a. The CITY failed, pursuant to the 1955 AGREEMENT, to apportion the
17 annual costs for treatment, including maintenance, expansion, and operation
18 of the treatment plant and trunk sewer between the CITY and the DISTRICT,
19 based upon the proportionate number of sewage connections, pursuant to the
20 1955 AGREEMENT;

21
22 b. The CITY failed, pursuant to the 1958 AGREEMENT, to properly maintain
23 records and accounts relating to costs and expenditures in connection with the
24 agreements;

- 1 c. The CITY failed to maintain complete records and accounts relating to costs
2 and expenditures of all sewer service charge revenues which may have been
3 collected for and on behalf of the District and it will make reports thereof to
4 the District monthly or semi-monthly, in accordance with the billing period
5 which may be established by the 'City, no later than fifteen (15) days
6 following the close of such billing period;
- 7 d. The CITY failed, pursuant to the 1966 AGREEMENT (Exhibit D), to
8 annually review the actual ratio of sewer connections as compared to the
9 projection, and to adjust the cost apportionment whenever the actual ratio
10 deviates by more than 10% from the projected ratio";
- 11 e. The CITY overbilled the DISTRICT beginning in 1967 through 1985, based
12 on projected ESSU'S rather than on the basis of the actual ratio of CITY-
13 DISTRICT ESSU'S, thereby damaging DISTRICT in an amount subject to
14 proof plus prejudgment interest;
- 15 f. The CITY failed, pursuant to the 1985 AGREEMENT (Exhibit E), to
16 apportion the annual costs for treatment, including maintenance, operation,
17 expansion, upgrading, administration, and financial services of the entire
18 sewage system (treatment plant, trunk sewer, and collection system) between
19 the CITY and DISTRICT in each year based upon the ratio of CITY-
20 DISTRICT sewer service units for each year of operation from and after July
21 1, 1985";
- 22 g. The CITY failed, pursuant to the 1985 AGREEMENT (Exhibit E), to adjust
23 annually the cost apportionment between CITY and DISTRICT at the
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1 beginning of each fiscal year of operation based upon the ratio of CITY-
2 DISTRICT equivalent sewer service units on record as of March 31 each year;

3 h. The CITY failed, pursuant to the 1985 AGREEMENT to adjust the cost
4 apportionment annually from 1985 to 1995 at the beginning of each fiscal year
5 of operation based upon the ratio of CITY-DISTRICT equivalent sewer
6 service units on record as of March 31 each year;

7 i. The CITY failed pursuant to the 1985 AGREEMENT to calculate the sewer
8 service units based on the definition as set forth in the agreement as being "a
9 single unit of sewer discharge having characteristics of flow, B.O.D. and
10 suspended solids equivalent to that generated and discharged by a typical
11 single family residential unit."
12

13 j. By calculating the number of sewer service units based on water usage rather
14 than the formula as set forth in the 1985 AGREEMENT;

15 k. By calculating the number of sewer service units based on dividing the
16 amount billed by the monthly rate rather than the formula as set forth in the
17 1985 AGREEMENT (Exhibit E);

18 l. Subsequent to the execution of the 1985 AGREEMENT, the CITY continued
19 to charge the DISTRICT for billing or collection services it rendered for or on
20 behalf of the DISTRICT in spite of the fact the 1985 AGREEMENT expressly
21 provided, "Paragraph 16 of the Agreement dated June 29, 1955 as amended by
22 the Supplemental Agreement Dated December 14, 1966, is hereby deleted"
23 (emphasis added), thereby causing DISTRICT damage in an amount subject
24 to proof.
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- 1 m. Understating the total number of ESSU'S within that portion of the CITY that
2 is not included in the over-lap area;
- 3 n. Overstating the total number of ESSU'S within the DISTRICT, including that
4 portion of the CITY which is included in the over-lap area;
- 5 o. Over charging the DISTRICT for work performed within the DISTRICT,
6 including that portion of the CITY which is included in the DISTRICT over-
7 lap area;
- 8 p. Maintaining incomplete records and accounts relating to revenue, costs and
9 expenditures for the sewer services separate from records and accounts
10 relating to other CITY services;
- 11 q. Comingling revenue, costs and expenses relating to other CITY services for
12 which DISTRICT has no financial obligation with costs and expenses relating
13 to the DISTRICT;
- 14 r. Not maintaining separate records and accounts relating to revenue, costs and
15 expenditures incurred by the CITY for its water system and other CITY
16 services for which the DISTRICT has no financial obligation;
- 17 s. Calculating the number of ESSU'S on a basis other than as provided in the
18 1955 AGREEMENT (Exhibit A) as amended by the 1966 AGREEMENT
19 (Exhibit D) and 1985 AGREEMENT (Exhibit E).

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22 48. Beginning in 1967 and continuing on through the effective date of the 1985
23 AGREEMENT, CITY failed to allocate the annual costs for the entire sewer system (treatment
24 plant, trunk sewer and collection system of the CITY and the DISTRICT), including
25 maintenance, operation, administration, repair and replacement, upgrading, debt service,
26

insurance and financial services between the CITY and the DISTRICT based upon the actual
ratio of CITY –DISTRICT, sewer service units for each year of operation, and overcharged the
DISTRICT an amount subject to proof but believed to be approximately \$524,971.16, plus
prejudgment interest, as more particularly set forth below:

Year	Cost Subject to Pro- Ration	Amount Billed District	Ratio Billed District	Actual Ratio of District Cost	Amount CITY Overcharged District
1958	\$13,784.00	\$2,009.44	21.36%	21.36%	-
1959	\$15,530.00	\$3,285.00	21.15%	21.15%	-
1960	\$25,069.00	\$5,317.00	21.21%	21.21%	-
1961	\$26,364.00	\$5,589.00	21.20%	21.20%	-
1962	\$28,939.00	\$6,207.00	21.45%	21.45%	-
1963	\$30,406.00	\$6,251.00	21.53%	21.53%	-
1964	\$34,405.00	\$6,787.00	22.32%	22.32%	-
1965	\$30,405.00	\$6,881.00	22.63%	22.63%	-
1966	\$34,405.00	\$7,992.00	23.23%	23.23%	-
1967	\$45,308.00	\$20,004.00	44.15%	23.91%	\$9,170.86
1968	\$53,834.00	\$24,194.00	44.95%	24.17%	\$11,182.33
1969	\$59,794.00	\$27,320.00	45.69%	24.37%	\$12,755.51
1970	\$54,847.00	\$25,432.00	46.37%	24.56%	\$11,961.58
1971	\$65,433.00	\$30,768.00	47.02%	24.81%	\$14,534.07
1972	\$88,134.00	\$41,969.00	47.62%	25.17%	\$19,735.67
1973	\$91,756.00	\$44,208.00	48.18%	25.56%	\$20,755.17
1974	\$99,317.00	\$48,387.00	48.72%	25.83%	\$22,733.42
1975	\$121,486.00	\$59,796.00	49.22%	26.36%	\$27,722.29
1976	\$126,342.00	\$62,779.00	49.69%	26.77%	\$28,957.25
1977	\$120,796.00	\$60,024.00	49.69%	24.90%	\$29,945.80
1978	\$146,539.00	\$72,815.00	49.69%	25.83%	\$34,963.98
1979	\$169,487.00	\$84,218.00	49.69%	25.52%	\$40,964.92
1980	\$219,048.00	\$112,459.00	51.34%	26.50%	\$54,411.28
1981	\$196,915.00	\$101,096.00	51.34%	27.03%	\$47,869.88
1982	\$231,514.00	\$118,859.71	51.34%	27.90%	\$54,267.23
1983*	\$215,614.02	\$110,696.23	51.34%	39.07%	\$26,455.83
1984	\$291,973.63	\$149,899.51	51.34%	39.17%	\$35,533.44
1985**	\$183,845.44	\$94,385.85	51.34%	39.94%	<u>\$20,957.98</u>
TOTAL					\$524,971.16

* Through 3rd quarter only.

** Six (6) months only.

1 49. Beginning on the effective date of the 1985 AGREEMENT and continuing on
2 through the effective date of the 1995 AGREEMENT, CITY failed to allocate the annual costs
3 for the entire sewer system (treatment plant, trunk sewer and collection system of the CITY and
4 the DISTRICT), including maintenance, operation, administration, repair and replacement,
5 upgrading, debt service, insurance and financial services between the CITY and the DISTRICT
6 based upon the ratio of CITY and DISTRICT, sewer service units for each year of operation, and
7 overcharged the DISTRICT an amount in an amount subject to proof.

8 50. At all times herein mentioned, CITY acted in a fiduciary capacity with and for the
9 benefit of the DISTRICT and was the paying and receiving agent for DISTRICT and maintains
10 all records and accounts of the CITY and DISTRICT, including but not limited to records and
11 accounts relating to CITY and DISTRICT revenue, expenses, and sewer service units.

12 51. DISTRICT further alleges that any money received by CITY on behalf of
13 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
14 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
15 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
16 ratio of CITY-DISTRICT sewer service units for each year of operation.

17 52. CITY represented to DISTRICT that the CITY-DISTRICT sewer service unit
18 ratios were accurate and on that basis charged the DISTRICT a disproportionate share of the
19 annual costs for treatment, including maintenance, operation, expansion, upgrading,
20 administration, insurance and financial services of the entire sewer system (treatment plant, trunk
21 sewer, and collection system).

1 53. At the time these representations were made, DISTRICT was unaware of their
2 falsity, but believed them to be true. Had DISTRICT been aware of the true facts, DISTRICT
3 would not have agreed to make disproportionate payments to CITY.

4 54. DISTRICT discovered the facts constituting the breach of contract and fiduciary
5 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after April
6 10, 2013, at which time DISTRICT discovered a document which reflected that CITY was
7 charging DISTRICT based on the projected number of ESSU'S rather than the actual number of
8 ESSU'S as required by the 1966 AGREEMENT (Exhibit D).

9 55. DISTRICT was unable to make an earlier discovery of the facts constituting the
10 beach of contract and fiduciary duty, as set forth in this Cause of Action, in that DISTRICT
11 relied on the CITY to perform all functions on behalf of the DISTRICT pursuant to the terms of
12 the 1955 AGREEMENT (Exhibit A), as amended by the 1958 AGREEMENT (Exhibit C), 1966
13 AGREEMENT (Exhibit D), and 1985 AGREEMENT (Exhibit E), including but not limited to:
14 operating and maintaining the waste water treatment plant and all DISTRICT trunk lines and
15 laterals; calculating DISTRICT-CITY ESSU ratios; performing all billing and collection
16 services; acting as DISTRICT paying and receiving agent; comingling DISTRICT-CITY funds;
17 and, lack of an independent DISTRICT board.

18
19 56. As a direct and proximate result of CITY'S misrepresentations concerning the
20 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
21 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
22 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
23 collection system), DISTRICT has suffered damages in an amount subject to proof.
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1 57. DISTRICT has at all times performed pursuant to the terms of the 1955
2 AGREEMENT (Exhibit A), as amended by the 1958 AGREEMENT (Exhibit C), 1966
3 AGREEMENT (Exhibit D) and 1985 AGREEMENT (Exhibit E), but CITY failed and refused to
4 tender its performance as required by said contracts.

5 58. CITY'S failure and refusal to perform its obligations pursuant the terms of the
6 1955 AGREEMENT, as amended by the 1958 AGREEMENT (Exhibit C), 1966 AGREEMENT
7 (Exhibit D) and 1985 AGREEMENT (Exhibit E), has damaged DISTRICT in that DISTRICT
8 has incurred expenses in excess of what it would have otherwise been required to pay, in an
9 amount subject to further discovery and proof but believed to be approximately \$1,947,983.66,
10 plus prejudgment interest in the approximate amount of \$4,740,416.78.

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COUNT II

(Breach of Contract - PARTICIPATION AGREEMENT (Exhibit F) as amended
by AMENDMENTS #1 (Exhibit H) and AMENDMENT # 2 (Exhibit I))

59. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through
7; paragraphs 13 through 16; paragraphs 18 and 19; and, paragraphs 21 through 32.

60. On July 19, 1995, CITY and DISTRICT entered into the PARTICIPATION
AGREEMENT (Exhibit F), which was amended on or about March 24, 1999 (1999
AGREEMENT (Exhibit H)) and December 15, 2004 (Exhibit I).

61. According to the PARTICIPATION AGREEMENT (Exhibit F), the CITY and
DISTRICT agreed in part as follows:

- a. "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"
(PARTICIPATION; AGREEMENT # 1, paragraph 1, first sentence, page 1
(Exhibit F))
- b. "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." (PARTICIPATION AGREEMENT, paragraph
1, second sentence, page 1(Exhibit F));

- 1 c. "CITY shall be the paying and receiving agent for all DISTRICT operation
2 and maintenance funds." (PARTICIPATION AGREEMENT, paragraph 1,
3 third sentence, page 1(Exhibit F));
- 4 d. "Cost apportionment between CITY and DISTRICT as described above shall
5 be adjusted annually at the beginning of each fiscal year of operation based
6 upon the ratio of CITY to DISTRICT equivalent sewer service units on record
7 as of March 31 each year." (PARTICIPATION AGREEMENT, paragraph 1,
8 fourth sentence, page 1(Exhibit F)); and,
- 9 e. "CITY shall maintain and furnish personnel for the maintenance, operation
10 and control of the treatment plant." (PARTICIPATION AGREEMENT,
11 paragraph 3, page 2 (Exhibit F));
- 12 f. "To carry out the purpose of this Agreement, the Board of Directors of
13 DISTRICT and the City Council of CITY shall meet together at such times
14 and places as they shall agree, but in any event at least once a year beginning
15 with the effective date of this Agreement." (PARTICIPATION
16 AGREEMENT, paragraph 6, page 2 (Exhibit F));
- 17 g. "CITY shall operate, maintain and repair the DISTRICT'S sewage collection
18 system, including all sewer mains and laterals constructed within the
19 DISTRICT. CITY shall maintain the system in good repair [...]"
20 (PARTICIPATION AGREEMENT, paragraph 9, page 2 (Exhibit F)); and,
- 21 h. "CITY will maintain complete records and accounts relating to costs and
22 expenditures made pursuant to or in connection with this Agreement, and of
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1 all sewer service revenues which it may have collected.” (PARTICIPATION
2 AGREEMENT, paragraph 13, page 3 (Exhibit F), emphasis added).

3 62. On March 24, 1999, DISTRICT and CITY amended the PARTICIPATION
4 AGREEMENT (Exhibit F) by entering into a written agreement, herein referred to as
5 AMENDMENT # 1 (Exhibit H). Said AMENDMENT # 1 (Exhibit H) only amended paragraphs
6 1 and 6 of the PARTICIPATION AGREEMENT (Exhibit F) as follows:

7 a. Paragraph 1, first sentence, amended by adding the phrases “repair and
8 replacement” and “debt service”. Said sentence thereafter read as follows:

9 “The annual costs for treatment, including maintenance, operation,
10 administration, repair and replacement, expansion, upgrading, debt
11 service, insurance and financial services of the entire sewer system
12 (treatment plant, trunk sewer and collection system) shall be apportioned
13 between the CITY and DISTRICT each year based upon the ratio of CITY
14 to DISTRICT sewer service units for each year of operation.”

15 (AMENDMENT # 1, paragraph 1, first sentence (Exhibit H))

16 b. A new second sentence was added to paragraph 1, by AMENDMENT # 1
17 (Exhibit H), which reads follows:

18 “Expense categories not included in a approved budget prior to the
19 1997/98 fiscal year must be authorized by a separate written agreement
20 approved by both the CITY and DISTRICT, such an agreement shall be
21 required if any expense (1) is a capital expenditure in excess of \$100,000,
22 other than for repair or replacement of existing facilities or equipment, or
23 (2) involves a charge that can be lawfully imposed in either the City or the
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unincorporated area but not in both the City and the unincorporated area.”

(AMENDMENT # 1, paragraph 1, second sentence (Exhibit H))

c. The third, fourth and fifth sentences of AMENDMENT # 1, paragraph 1 (Exhibit H) are a verbatim restatement of the remaining portion of the original paragraph 1 in the PARTICIPATION AGREEMENT (Exhibit F), and read as follows:

(1) “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” (AMENDMENT # 1, paragraph 1, third sentence);

(2) “CITY shall be the paying and receiving agent for all DISTRICT operation and maintenance funds” (AMENDMENT # 1, paragraph 1, fourth sentence); and,

(3) “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.” (AMENDMENT # 1, paragraph 1, fifth sentence)

63. Beginning on or about June 9, 2004, CITY represented to DISTRICT that a fair share allocation of the remaining capacity at the Waste Water Treatment Plant with the implementation of the Chemical Enhancement to the Primary Treatment (CEPT) Program would be 77% of the ESSU’S for the DISTRICT and 23 % of the ESSU’S for the CITY.

1 64. According to a report prepared by Bernie Ziemianek, Public Utilities Director,
2 City of Ukiah, dated September 15, 2004 and presented to the DISTRICT at its meeting on
3 September 23, 2004, the "existing 77/23 proportion was based on historical connections where
4 the pattern was a linear growth fit". The report went on to state that there were 12,043 "existing"
5 ESSU's which were divided DISTRICT, 54.8%; CITY, 45.1% [sic] and that said percentages for
6 the CEPT program which added an additional 2400 ESSU's, would be divided DISTRICT, 77%;
7 CITY, 23%. Said report is in direct conflict with other reports prepared by the CITY, as more
8 particularly set forth in paragraph 67 below, which show as of March 31, 2004, although there
9 were 12,044 ESSU's, they were divided DISTRICT, 5,440 ESSU'S; CITY 6,604 ESSU'S. Said
10 division equates to a ratio of DISTRICT, 45.2%; CITY, 54.8%.

11
12 65. CITY'S contention there is "historical" data for any time period prior to 2004 that
13 the ESSU'S were divided on basis of DISTRICT, 77%, CITY, 23% was false. According to
14 CITY records, at no time since 1955 have the "actual" DISTRICT ESSU'S exceeded 51.34% of
15 the total CITY-DISTRICT sewer service units.

16 66. CITY misrepresented to the DISTRICT the number of ESSU'S in the CITY and
17 DISTRICT, including the over-lap area, for the purpose of inducing the DISTRICT to enter into
18 AMENDMENT # 2 (Exhibit I) whereby DISTRICT would be financially committed to a greater
19 percentage of the debt service on the proposed seventy-three million dollar (\$75,060,000) bond
20 issue than the actual ratio of DISTRICT-CITY ESSU's would require.

21
22 67. According to "Sewer Statistic" reports prepared by the CITY for the years ending
23 March 31, 2002 through March 31, 2005, the ratio of the CITY-DISTRICT ESSU'S were as
24 follows:

Date	District ESSU'S	% of Total	City ESSU'S	% of Total	Total ESSU'S
2002-03-31	5,184	39.2%	8,027	60.8%	13,211
2003-03-31	5,070	44.1%	6,427	55.9%	11,498
2004-03-31	5,440	45.2%	6,604	54.8%	12,044
2005-03-31	5,498	47.1%	6,169	52.9%	11,667

68. The inaccuracy of the CITY accounting system is further evidenced by a report published by BARTLE WELLS ASSOCIATES which was prepared for CITY dated October, 2005. According to said report, the CITY-DISTRICT RATIO of ESSU'S is as follows:

Date	District ESSU'S	% of Total	City ESSU'S	% of Total	Total ESSU'S
2005-April	4,971	46.61%	5,694	53.39%	10,665

69. The BARTLE WELLS ASSOCIATES report referred to in paragraph 68, when compared to a CITY report referred to in paragraph 67, reflects an unexplained reduction in the total number of ESSU'S of 2,546 from March 31, 2002 to April, 2005. Of that number, there is a reduction in the DISTRICT-CITY totals as follows: DISTRICT, 213; CITY, 2,333. Said changes increased the DISTRICT ratio from 39.2% to 46.61%; and, reduced the CITY ratio from 60.8% to 53.39%.

70. The BARTLE WELLS ASSOCIATES report referred to in paragraph 68, when compared to a CITY report referred to in paragraph 67, also reflects an unexplained reduction in the total number of ESSU'S of 1,002 within the same 30 day period of time from March 31, 2005 to April, 2005.

71. Based on the misrepresentations by CITY employees and agents regarding the DISTRICT-CITY ratio of ESSU'S, on or about December 15, 2004, DISTRICT and CITY

1 entered into AMENDMENT # 2 (Exhibit I) to the PARTICIPATION AGREEMENT (Exhibit F)
2 which only amended paragraphs 1 and 6 of the PARTICIPATION AGREEMENT (Exhibit F) as
3 amended by AMENDMENT # 1 (Exhibit H).

4 72. AMENDMENT # 2 (Exhibit I) to the PARTICIPATION AGREEMENT (Exhibit
5 F) provides in part as follows:

6 a. RECITALS:

7 (1) On July 19, 1995 [sic], the Parties entered an Amendment No. 1 to the
8 PARTICIPATION AGREEMENT (Exhibit F). That agreement affirms
9 that the annual costs for the entire sewer system (treatment plant, trunk
10 sewer and collection system of the CITY and the DISTRICT), including
11 maintenance, operation, administration, repair and replacement,
12 upgrading, debt service, insurance and financial services are allocated
13 between the CITY and the DISTRICT based upon the ratio of CITY and
14 DISTRICT sewer service units (ESSU's) for each year of operation.

15 "Sewer service unit" is defined in the PARTICIPATION AGREEMENT
16 (Exhibit F) and is referred to herein as "Sewer service unit" or "ESSU."
17 (AMENDMENT #2, Recital 2, page 1(Exhibit I))
18

19 (2) The "Capacity Project" is described as a project to increase the capacity of
20 the wastewater treatment plant to permit additional new connections in
21 both the DISTRICT and the CITY. (AMENDMENT #2, Recital 7, page 2
22 (Exhibit I));
23

24 (3) The "Upgrade/Rehabilitation Project" is described as a project to
25 rehabilitate and upgrade the wastewater treatment plant;
26

1 (4) The "Capacity Project" and "Upgrade/Rehabilitation Project" are
2 described as collectively as "the Project";and,

3 (5) "Increased Capacity" is the increase in the wastewater treatment plant's
4 capacity by an additional 2400 ESSU's as a result of the Capacity Project.
5 (AMENDMENT # 2, Recitals, paragraph 8, page 2 (Exhibit I)).

6 b. AGREEMENT:

7 (1) 1.1. ESSU's During Interim Period. The ESSU's made available through
8 the use of the pre-treatment process recommended by Brown and Caldwell
9 shall be allocated as follows: 938 to the DISTRICT; 442 to the CITY
10 (AMENDMENT #2, Agreement, paragraph 1.1, page 2 (Exhibit I));
11

12 (2) 1.2. The INCREASED CAPACITY. The INCREASED CAPACITY shall
13 be allocated as follows: 65% to the DISTRICT; 35% to the CITY. "This
14 allocation of INCREASED CAPACITY shall be subject to the same
15 review and opportunity for adjustment as is provided for the allocation of
16 CAPACITY PROJECT costs under Section 2.1 of this Agreement.
17 (AMENDMENT #2, Agreement, paragraph 1.2, page 3 (Exhibit I),
18 emphasis added);

19 (3) 2. Allocation of the Project Costs. All of the costs of the PROJECT
20 ("Project Costs"), including, but not limited to, planning, engineering,
21 design, design review, administration, construction, legal and financing
22 (including fees, financial services, transaction costs and debt service) shall
23 be allocated between the CITY and the DISTRICT as follows
24 (AMENDMENT #2, Agreement, paragraph 2, page 3 (Exhibit I));
25
26

1 a. 2.1. The CAPACITY PROJECT. 35% of the PROJECT COSTS of
2 the CAPACITY PROJECT shall be paid by the CITY and 65% of
3 those PROJECT COSTS shall be paid by the DISTRICT. This
4 allocation of CAPACITY PROJECT costs is based on an estimate of
5 the number of new Sewer service units that will be needed in the CITY
6 and in the DISTRICT through the year 2020:

7 (1) "The allocation of these costs shall be reviewed annually by the
8 Parties to insure that the cost sharing reflects the actual
9 proportion of new connections in the City and the District"

10 (AMENDMENT #2, Agreement, paragraph 2.1, page 3 (Exhibit
11 I)); and,
12

13 (2) "Each year, commencing twelve months after the completion of
14 the Project, the Parties shall meet to conduct this review, taking
15 into account the number of new service connections within each
16 party during the previous twelve months, the total number of new
17 connections within each party's jurisdiction since the Effective
18 Date, the likely number of new connections in the next one, three
19 and five year time periods, any changes in organization,
20 including annexations or detachments, which may have occurred,
21 and any other facts or conditions the Parties consider relevant.
22 Based upon this review, the Parties may adjust the allocation of
23 these costs between them." (AMENDMENT #2, Agreement,
24 paragraph 2.1, page 3 (Exhibit I)).
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26

1 b. 2.2. The UPGRADE/REHABILITATION PROJECT:

2 i. “The Project Costs of the Upgrade/Rehabilitation Project shall be
3 allocated between the City and the District based upon the ratio of
4 City and District ESSUs for each year of operation, commencing
5 in the year when Project Costs are first incurred, as provided in
6 the Participation Agreement.” (AMENDMENT #2, Agreement,
7 paragraph 2.2, page 3, emphasis added (Exhibit I).

8 ii. “Consistent with the Participation Agreement, these allocations
9 shall be calculated each year at the same time and in the same
10 manner as other costs allocated under Section 1 of the
11 Participation Agreement.” (AMENDMENT #2, Agreement,
12 paragraph 2.2, page 3, emphasis added (Exhibit I).)

13
14 (4) “5. Effect on Participation Agreement. This Amendment No. 2
15 constitutes a second amendment to the Participation Agreement, and is
16 not intended to alter the terms of the Participation Agreement and
17 Amendment No. 1, except as expressly provided. Collectively the
18 Participation Agreement, Amendment No. 1 and Amendment No. 2,
19 contain the entire agreement between the City and the District concerning
20 the wastewater treatment plant and the City's operation of the sewer
21 systems in the City and the District. These agreements supercede and
22 replace any other statements, agreements, or understandings between the
23 Parties concerning this subject matter. The Participation Agreement,
24 including Amendment No. 1 and this Amendment No. 2 may be modified
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26

only by a written agreement approved by the governing bodies of the
Parties and executed by an authorized officer of each Party.”

(AMENDMENT # 2, Agreement, paragraph 5, page 4 (Exhibit I))

73. At the time DISTRICT entered into the PARTICIPATION AGREEMENT
(Exhibit F) and AMENDMENTS # 1 and # 2 (Exhibits H and I), the Board of Directors of the
DISTRICT was ignorant of the true facts and was relying on the representations made by
employees of the CITY that the facts they represented to the DISTRICT relating to the split of
ESSU’S were true.

74. Subsequent to the execution of the PARTICIPATION AGREEMENT (Exhibit F),
beginning on or about July 19, 1995 and continuing up to the present, CITY breached the
PARTICIPATION AGREEMENT (Exhibit F), and each of the amendments (Exhibits H and I)
thereto as follows:

a. Failed to allocate 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 between the CITY and the
DISTRICT based upon the ratio of CITY and DISTRICT sewer service units
(ESSU’s) for each year of operation;.

b. Failed and refused, and continue to fail and refuse to tender its performance as
required by said agreements, in that CITY fails and refuses to:

(1) Allow DISTRICT to have complete access to the records CITY maintains
regarding ESSU’S located in the DISTRICT, including those located in the
over-lap area;

- 1 (2) Allow DISTRICT to have complete access to the records CITY maintains
2 regarding ESSU'S located in the CITY that are not included in the over-lap
3 area;
- 4 (3) Accurately account to DISTRICT the number of ESSU'S located in the
5 DISTRICT, including those located in the over-lap area;
- 6 (4) Accurately account to DISTRICT the number of ESSU'S located in the
7 CITY that are not included in the over-lap area;
- 8 (5) Calculate the number of ESSU'S based on the formula as set forth in the
9 PARTICIPATION AGREEMENT rather than water usage or dividing the
10 amount billed by the current rate;
- 11 (6) Maintain complete records and accounts' relating to the revenue it has
12 received for the DISTRICT, including the overlap area, and CITY;
- 13 (7) Allow DISTRICT to have complete access to the records CITY maintains
14 regarding the annual costs for treatment, including maintenance, operation,
15 administration, repair and replacement, expansion, upgrading, debt service,
16 insurance and financial services of the entire sewer system (treatment plant,
17 trunk sewer and collection system);
- 18 (8) Apportion the annual costs of treatment, including maintenance, operation,
19 administration, expansion, upgrading, insurance and financial services of
20 the entire sewer system (treatment plant, trunk sewer and collection
21 system) each year based upon the ratio of CITY to DISTRICT sewer
22 service units for each year of operation;
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- 1 (9) Apportion the annual costs of treatment, including maintenance, operation,
2 administration, repair and replacement, expansion, upgrading, debt service,
3 insurance and financial services of the entire sewer system (treatment plant,
4 trunk sewer and collection system) each year based upon the ratio of CITY
5 to DISTRICT sewer service units for each year of operation;
- 6 (10) Collect all revenue in accordance with the PARTICIPATION
7 AGREEMENT, as amended (Exhibits F, H and I), and apply such revenue
8 to make the DISTRICT PAYMENTS on behalf of DISTRICT;
9 (FINANCING AGREEMENT, Agreement, section 1, page 2 (Exhibit J))
- 10 (11) Properly bill new accounts located in the DISTRICT;
- 11 (12) Credit DISTRICT with all funds collected for sewer service units located
12 within the DISTRICT boundaries and the over-lap area;
- 13 (13) Maintain full and complete accounting records of CITY'S actual cost of
14 issuance of permits and costs of inspection which allow the review of such
15 charges not less than once each year, so that they may at all times reflect
16 actual costs;
- 17 (14) Maintain complete records and accounts relating to costs and expenditures
18 made pursuant to or in connection with this PARTICIPATION
19 AGREEMENT;
- 20 (15) Maintain complete records and accounts relating to all sewer service
21 revenues which it may have collected;
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- 1 (16) Accurately account to the DISTRICT for all revenue collected pursuant to
2 the FINANCING AGREEMENT (Exhibit J) and the PARTICIPATION
3 AGREEMENT (Exhibits F, H and I);
- 4 (17) Apportion costs annually based upon the ratio of CITY-DISTRICT
5 equivalent sewer service units (ESSU'S);
- 6 (18) Apportion costs for the INCREASED CAPACITY between the CITY and
7 DISTRICT subsequent to December 15, 2004, based upon the ratio of
8 CITY-DISTRICT ESSUs, to insure that the cost sharing reflects the **actual**
9 **proportion of new connections** in the City and the District;
- 10 (19) Review annually subsequent to December 15, 2004, the cost
11 apportionment for INCREASED CAPACITY, to insure the cost sharing
12 reflects the **actual proportion of new connections** to the CITY and
13 DISTRICT;
- 14 (20) Apportion the PROJECT COSTS of the CAPACITY PROJECT being
15 reviewed annually subsequent to December 15, 2004, to insure the cost
16 sharing reflects the **actual proportion of new connections** to the CITY and
17 DISTRICT;
- 18 (21) Review the PROJECT COSTS each year subsequent to December 15,
19 2004, to insure the cost sharing reflects the **actual proportion of new**
20 **connections** in the CITY and DISTRICT;
- 21 (22) Meet annually with the DISTRICT subsequent to December 15, 2004, to
22 review Cost apportionment, taking into account:
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1 (a) The number of new service connections within each party during the
2 previous twelve months;

3 (b) The total number of new connections within each party's jurisdiction
4 since the Effective Date;

5 (c) The likely number of new connections in the next one, three and five
6 year time periods;

7 (d) Any changes in organization which may have occurred; and,

8 (e) Any other facts or conditions the CITY and DISTRICT consider
9 relevant;

10 (23) Apportion the PROJECT COSTS for the CAPACITY PROJECT between
11 the CITY and DISTRICT subsequent to December 15, 2004, based upon
12 the ratio of CITY and DISTRICT ESSUs, to insure that the cost sharing
13 reflects the actual proportion of new connections in the CITY and
14 DISTRICT;

15 (24) Review each year subsequent to December 15, 2004, Cost apportionment
16 for the CAPACITY PROJECT to insure the cost sharing reflects the actual
17 proportion of new connections in the CITY and DISTRICT;

18 (25) Allocate the PROJECT COSTS for the CAPACITY PROJECT each year
19 subsequent to December 15, 2004, at the same time and in the same
20 manner as other costs allocated under Section 1 of the PARTICIPATION
21 AGREEMENT;
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1 (26) The CITY and DISTRICT meeting annually subsequent to December 15,
2 2004, to review Cost Apportionment for the CAPACITY PROJECT taking
3 into account:

4 (a) The number of new service connections within each party during the
5 previous twelve months;

6 (b) The total number of new connections within each party's jurisdiction
7 since the Effective Date;

8 (c) The likely number of new connections in the next one, three and five
9 year time periods;

10 (d) Any changes in organization which may have occurred; and,

11 (e) Any other facts or conditions the CITY and DISTRICT consider
12 relevant.
13

14 (27) Apportion PROJECT COSTS of the UPGRADE/ REHABILITATION
15 PROJECT between the CITY and DISTRICT based upon the ratio of
16 CITY and DISTRICT ESSUs for each year of operation, commencing in
17 the year when PROJECT COSTS are first incurred, as provided in the
18 PARTICIPATION AGREEMENT;

19 (28) Review each year cost apportionment for the UPGRADE/REHABILITA-
20 TION to insure the cost sharing reflects the actual proportion of new
21 connections in the CITY and DISTRICT;

22 (29) Allocate the PROJECT COSTS for the UPGRADE/ REHABILITATION
23 PROJECT each year, at the same time and in the same manner as other
24 costs allocated under Section 1 of the PARTICIPATION AGREEMENT;
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- 1 (30) Maintain complete accounting records of the actual costs for issuance of
2 permits and inspections, which will allow the review of such charges not
3 less than once each year so they may at all times reflect such actual costs;
- 4 (31) Maintain complete records and accounts relating to costs and expenditures
5 of all sewer service revenues which may have been collected;
- 6 (32) Stop understating the total number of ESSU'S within that portion of the
7 CITY that is not included in the over-lap area;
- 8 (33) Stop overstating the total number of ESSU'S within the DISTRICT,
9 including that portion of the CITY included in the over-lap area;
- 10 (34) Stop over-charging the DISTRICT for work performed within the
11 DISTRICT, including that portion of the CITY included in the DISTRICT
12 over-lap area;
- 13 (35) Maintain complete records and accounts relating to costs and expenditures
14 for the sewer services separate from records and accounts relating to other
15 CITY services;
- 16 (36) Stop comingling costs and expenses relating to other CITY services for
17 which DISTRICT has no financial obligation with costs and expenses
18 relating to the DISTRICT;
- 19 (37) Maintaining separate records and accounts relating to costs and
20 expenditures incurred by the CITY for its water system and other CITY
21 services for which the DISTRICT has no financial obligation;
- 22 (38) Credit DISTRICT grant proceeds for reimbursement for engineering
23 expenses for sewer plant renovation and expansion;
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- 1 (39) Hire and supervise a district engineer;
- 2 (40) Credit DISTRICT with all funds charged DISTRICT for fines and charges
- 3 made against the DISTRICT/CITY joint account due to CITY negligence
- 4 in reporting and content of reports submitted to North Coast Regional
- 5 Water Quality Control District;
- 6 (41) Disclose to DISTRICT reduced connection fees charged any properties
- 7 located in the CITY;
- 8 (42) Disclose to DISTRICT reduced monthly fees charged any properties
- 9 located in the CITY;
- 10 (43) Reimburse DISTRICT for its share of the sale price or fair market value
- 11 for surplus equipment that was purchased in whole or in part with
- 12 DISTRICT funds, that are either sold to third parties or transferred to other
- 13 CITY departments [“CITY shall be the paying and receiving agent for all
- 14 DISTRICT operation and maintenance funds;
- 15 (44) Provide liability and performance insurance on behalf of the DISTRICT;
- 16 (45) Supervise the process of permit renewal and bid for services for studies
- 17 incorporated in the permit renewal allowing for non-competitive bid
- 18 acceptance;
- 19 (46) Make timely accountings of delinquent sewer charges;
- 20 (47) Stop executing agreements with or assigning to collection agencies for the
- 21 collection of delinquent district sewer charges without authority of district;
- 22 (48) Provide accounting justifications for audit years 1995 through 2012;
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1 (49) Include in the calculation of CITY ESSU'S, those ESSU'S arising out of
2 connections to the sewer system by City Hall, corporations yard, solid
3 waste disposal center, and the landfill that is the subject matter of the
4 SEWER AGREEMENT located on Mendocino County Assessor's Parcel
5 Number 178-130-01, Ukiah, California, or any other property occupied by
6 the CITY, in whole or in part;

7 (50) Charge the CITY connection fees for ESSU'S arising out of properties
8 occupied by the CITY, whether within or without the DISTRICT or
9 overlap areas, including but not limited to City Hall, corporations yard,
10 solid waste disposal center, and the landfill that is the subject matter of the
11 SEWER AGREEMENT located on Mendocino County Assessor's Parcel
12 Number 178-130-01, Ukiah, California, or any other property occupied by
13 the CITY in whole or in part;

14 (51) Charge the CITY the monthly service charge for ESSU'S arising out of
15 properties occupied by the CITY, whether within or without the DISTRICT
16 or overlap areas, including but not limited to City Hall, corporations yard,
17 solid waste disposal center, and the landfill that is the subject matter of the
18 SEWER AGREEMENT located on Mendocino County Assessor's Parcel
19 Number 178-130-01, Ukiah, California, or any other property occupied by
20 the CITY in whole or in part;

21 (52) Provide an accounting of jointly owned vehicles and equipment;

22 (53) Charge and collect for leachate from the land-fill;

- 1 (54) Collect fees for residential sewer service in accordance with ordinance
2 related to master meter service;
- 3 (55) Expend district revenue for services and costs not in the approved joint
4 budget items without authority of district;
- 5 (56) Deliver reports and studies for sewer management paid for with joint
6 funds;
- 7 (57) Charge the district for loan payments in excess of the amount provided for
8 in AMENDMENT #2;
- 9 (58) Maintain and deliver plans and specifications for the DISTRICT sewer
10 mains and laterals;
- 11 (59) Prepare and deliver required reports to North Coast Regional Water
12 Quality Control District in a timely and accurate manner;
- 13 (60) Stop charging the DISTRICT for use of the equipment on DISTRICT
14 sewer projects, that was proportionately purchased by the DISTRICT and
15 CITY;
- 16 (61) Charge the CITY in the same manner that it charges the DISTRICT for
17 use of the equipment, on CITY sewer projects, that was proportionately
18 purchased by the DISTRICT and CITY;
- 19 (62) Charge the CITY Water Department or other CITY agencies for use of
20 equipment which the DISTRICT paid its proportionate share of the
21 purchase price; and,
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1 (63) Reimburse the DISTRICT for the use of equipment that was

2 proportionately purchased by the DISTRICT and used by the CITY on
3 CITY water or other projects.

4 75. At all times herein mentioned, CITY acted in a fiduciary capacity with and for the
5 benefit of the DISTRICT and was the paying and receiving agent for DISTRICT and maintains
6 all records and accounts of the CITY and DISTRICT, including but not limited to records and
7 accounts relating to CITY and DISTRICT revenue, expenses, and sewer service units.

8 76. CITY represented to DISTRICT that the CITY-DISTRICT sewer service unit
9 ratios were accurate and on that basis charged the DISTRICT a disproportionate share of the
10 annual costs for treatment, including maintenance, operation, expansion, upgrading,
11 administration, insurance and financial services of the entire sewer system (treatment plant, trunk
12 sewer, and collection system).

13
14 77. At the time these representations were made, DISTRICT was unaware of their
15 falsity, but believed them to be true. Had DISTRICT been aware of the true facts, DISTRICT
16 would not have agreed to make disproportionate payments to CITY.

17 78. DISTRICT further alleges that any money received by CITY on behalf of
18 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
19 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
20 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
21 ratio of CITY-DISTRICT sewer service units for each year of operation.

22
23 79. The concealment and misrepresentations of CITY, as more particularly set forth
24 herein, and the overcharging of DISTRICT for expenses not authorized by the agreements or in
25 the contemplation of the parties at the time the agreements were executed, were continuing or
26

1 reoccurring acts creating an indivisible course of conduct and the CITY'S breach of contract and
2 breach of fiduciary duty to the DISTRICT to maintain complete and accurate records and
3 accounts relating to ESSU'S, revenue, and expenses, thereby causing damage to DISTRICT in
4 an amount subject to proof.

5 80. DISTRICT discovered the facts constituting the breach of contract and fiduciary
6 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
7 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
8 numerous ESSU'S located in the DISTRICT which were credited to CITY accounts.

9 81. DISTRICT was unable to make an earlier discovery of the facts constituting the
10 breach of contract and fiduciary duty, as set forth in this Cause of Action, in that DISTRICT
11 relied on the CITY to perform all functions as more particularly set forth in the
12 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
13 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
14 and collection services; acting as DISTRICT paying and receiving agent; comingling
15 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
16 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

17 82. As a direct and proximate result of CITY'S misrepresentations concerning the
18 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
19 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
20 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
21 collection system), DISTRICT has suffered damages in an amount subject to further discovery
22 and proof.
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1 83. DISTRICT has at all times performed pursuant to the terms of the
2 PARTICIPATION AGREEMENT (Exhibit F), as amended by AMENDMENT # 1 (Exhibits H),
3 and AMENDMENT # 2 (Exhibits I), but CITY failed and refused, and continues to fail and
4 refuse, to tender its performance as required by said contracts.

5 84. CITY'S failure and refusal to perform its obligations pursuant the terms of the
6 PARTICIPATION AGREEMENT (Exhibit F), as amended by AMENDMENT # 1 (Exhibits H),
7 and AMENDMENT # 2 (Exhibits I), has damaged DISTRICT in that DISTRICT has incurred
8 expenses in excess of what it would have otherwise been required to pay, in an amount subject to
9 further discovery and proof but believed to be approximately \$11,887,403.78, plus prejudgment
10 interest in the approximate amount of \$8,170,626.24 for a total of \$22,477,767.94.

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1 COUNT III

2 (Breach of Contract - FINANCING AGREEMENT (Exhibit J))

3 85. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through
4 7; paragraph 17 through 19; paragraphs 34 through 40; and, paragraphs 60 through 84.

5 86. On or about March 2, 2006, DISTRICT and CITY entered into the FINANCING
6 AGREEMENT (Exhibit J). According to the FINANCING AGREEMENT (Exhibit J):

- 7 a. The City and the District have previously entered into a Participation
8 Agreement dated July 19, 1995 (Exhibit F), as amended by Amendment No. 1
9 (Exhibit H) and Amendment No. 2 (Exhibit I), "thereto (as so amended, the
10 'Participation Agreement'), under which the City operates and maintains, as a
11 unified system, the wastewater treatment plant, the District's collection and
12 transmission system and the City's system for the collection and disposal of
13 wastewater (the 'Wastewater System')." (FINANCING AGREEMENT,
14 Background, paragraph 2, page 1 (Exhibit J)
- 15
16 b. "Under the Participation Agreement [Exhibits F, H and I], the costs of
17 improving, operating and maintaining the Wastewater System are apportioned
18 between the City and the District each year in accordance with procedures and
19 methodology set forth therein." (FINANCING AGREEMENT, Background,
20 paragraph 3, page 1 (Exhibit J)
- 21
22 c. "The District [agreed to] establish rates and charges for the use of the
23 District's portion of the Wastewater System which are sufficient to enable the
24 District to pay its share of the costs of such improvements as apportioned
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1 under the Participation Agreement [Exhibits F, H and I].” (FINANCING
2 AGREEMENT, Background, paragraph 4, page 1 (Exhibit J)

- 3 d. In order to finance improvements to the waste water treatment plant (“the
4 Project”), DISTRICT agreed to pay its share of the 2006 Water and
5 Wastewater Revenue Bonds, Series A, in the aggregate principal amount of
6 \$75,060,000; and,
7
8 e. “The City and the District wish to enter into this Agreement for the purpose of
9 securing the portion of the financing costs which are allocable to the District
10 in accordance with the Participation Agreement [Exhibits F, H and I], in the
11 same manner in which the City's allocable share of such financing costs is
12 secured under the Installment Sale Agreement” (FINANCING
13 AGREEMENT, Background, paragraph 6, page 1 (Exhibit J).

14 87. Pursuant to the FINANCING AGREEMENT (Exhibit J), DISTRICT and CITY
15 agreed:

- 16 a. “A portion of the Installment Payments shall be apportioned to the District
17 under and in accordance with the procedures and methodology set forth in the
18 Participation Agreement [Exhibits F, H and I]. Such payments are referred to
19 as the “District Payments.” (FINANCING AGREEMENT, Agreement,
20 section 1, page 2 (Exhibit J));
21
22 b. “The District will fix, prescribe and revise rates connection fees and other fees
23 and charges for the services and facilities furnished by the District's portion of
24 the Wastewater System during each fiscal year of the District, which are at
25 least sufficient, after making allowances for contingencies and error in the
26

1 estimates, to yield net revenues (being total revenues less all other costs
2 apportioned to the District under the Participation Agreement [Exhibits F, H
3 and I] for the operation, maintenance and repair of the District's portion of the
4 Wastewater System) which are at least equal to 120% of the aggregate amount
5 of District Payments for such fiscal year. All such revenues will be collected
6 by the City in accordance with the Participation Agreement [Exhibits F, H and
7 I], and the City will apply such revenues to pay the District Payments on
8 behalf of the District.” (FINANCING AGREEMENT, Agreement, section 2,
9 page 2 (Exhibit J))

10
11 c. “The District has the right at any time to establish a Rate Stabilization Fund to
12 be held by it or by the City and administered in accordance with this Section
13 3, for the purpose of stabilizing the rates and charges imposed by the District
14 with respect to the Wastewater System. From time to time the District may
15 deposit amounts in the Rate Stabilization Fund, from any source of legally
16 available funds, as the District may determine.” (FINANCING
17 AGREEMENT, Agreement, section 3, first paragraph, page 2 (Exhibit J));
18 and,

19
20 d. “The District may, but is not be required to, withdraw from any amounts on
21 deposit in the Rate Stabilization Fund and transfer such amounts to the City in
22 any fiscal year for the purpose of paying any portion of the District Payments
23 coming due and payable in such fiscal year. Amounts on deposit in a Rate
24 Stabilization Fund are not pledged to and do not secure the District Payments.
25 All interest or other earnings on deposits in the Rate Stabilization Fund will be
26

1 retained therein or, at the option of the District, be applied for any other lawful
2 purposes. The District may at any time withdraw any or all amounts on
3 deposit in the Rate Stabilization Fund and apply such amounts for any other
4 lawful purposes of the District.” (FINANCING AGREEMENT, Agreement,
5 section 3, second paragraph, page 2 (Exhibit J))

6 88. According to the terms of the AMENDMENT #2, CITY was to allocate the costs
7 for financing the bond issue as follows:

8 a. 2.1. The CAPACITY PROJECT. 35% of the PROJECT COSTS of the
9 CAPACITY PROJECT shall be paid by the CITY and 65% of those
10 PROJECT COSTS shall be paid by the DISTRICT. This allocation of
11 CAPACITY PROJECT costs is based on an estimate of the number of new
12 Sewer service units that will be needed in the CITY and in the DISTRICT
13 through the year 2020 (AMENDMENT #2, Agreement, paragraph 2.1, page 3
14 (Exhibit I));

15 (1) “The allocation of these costs shall be reviewed annually by the Parties to
16 insure that the cost sharing reflects the actual proportion of new
17 connections in the City and the District” (AMENDMENT #2, Agreement,
18 paragraph 2.1, page 3 (Exhibit I), underline emphasis added); and,

19 (2) “Each year, commencing twelve months after the completion of the
20 Project, the Parties shall meet to conduct this review, taking into account
21 the number of new service connections within each party during the
22 previous twelve months, the total number of new connections within each
23 party's jurisdiction since the Effective Date, the likely number of new
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1 connections in the next one, three and five year time periods, any changes
2 in organization, including annexations or detachments, which may have
3 occurred, and any other facts or conditions the Parties consider relevant.
4 Based upon this review, the Parties may adjust the allocation of these costs
5 between them.” (AMENDMENT #2, Agreement, paragraph 2.1, page 3
6 (Exhibit I) , underline emphasis added).

7 b. 2.2. The UPGRADE/REHABILITATION PROJECT:

- 8 (1) “The Project Costs of the Upgrade/Rehabilitation Project shall be
9 allocated between the City and the District based upon the ratio of City
10 and District ESSUs for each year of operation, commencing in the year
11 when Project Costs are first incurred, as provided in the Participation
12 Agreement.” (AMENDMENT #2, Agreement, paragraph 2.2, page 3
13 (Exhibit I)
14
15 (2) “Consistent with the Participation Agreement, these allocations shall
16 be calculated each year at the same time and in the same manner as
17 other costs allocated under Section 1 of the Participation Agreement.”
18 (AMENDMENT #2, Agreement, paragraph 2.2, page 3 (Exhibit I))

19 89. DISTRICT has at all times performed pursuant to the manner specified by the
20 FINANCING AGREEMENT (Exhibit J) and Participation Agreement (Exhibits F, H and I), as
21 incorporated therein by reference, but CITY has failed and refused, and continues to refuse, to
22 tender its performance as required by the FINANCING AGREEMENT (Exhibit J).

23
24 90. DISTRICT has at all times performed the terms of the contracts in the manner
25 specified by the FINANCING AGREEMENT (Exhibit J) and Participation Agreement (Exhibits
26

1 F, H and I) but CITY has failed and refused, and continues to refuse, to tender its performance as
2 required by the FINANCING AGREEMENT (Exhibit J), in that CITY fails and refuses to:

- 3 a. Apportion the annual costs of treatment, including maintenance, operation,
4 administration, repair and replacement, expansion, upgrading, debt service,
5 insurance and financial services of the entire sewer system (treatment plant,
6 trunk sewer and collection system) each year based upon the ratio of CITY to
7 DISTRICT sewer service units for each year of operation;
- 8 b. Collect all revenues in accordance with the Participation Agreement (Exhibits
9 F, H and I), and apply such revenue to make the DISTRICT PAYMENTS on
10 behalf of DISTRICT;
- 11 c. Properly bill new accounts located in the DISTRICT;
- 12 d. Credit DISTRICT with all funds collected for sewer service units located
13 within the DISTRICT boundaries and the over-lap area;
- 14 e. Apportion the costs of improving, operating and maintaining the Wastewater
15 System between the CITY and the DISTRICT each year in accordance with
16 procedures and methodology as set forth in the terms and conditions of the
17 Participation Agreement (Exhibits F, H and I);
- 18 f. Collect all DISTRICT connection fees and other fees and charges, for the
19 services and facilities furnished by the DISTRICT'S portion of the
20 Wastewater System during each fiscal year, less all other costs apportioned to
21 the DISTRICT for the operation, maintenance and repair of the DISTRICT'S
22 portion of the Wastewater System, in accordance with the Participation
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1 Agreement (Exhibits F, H and I), and apply such revenues to pay the
2 DISTRICT PAYMENTS on behalf of the DISTRICT;

3 g. Pay its share of the costs of the improvements to the waste water treatment
4 plant pursuant to the terms and conditions of the FINANCING
5 AGREEMENT; and,

6 h. Provide DISTRICT all rate-stabilization funds and a complete accounting
7 thereof, including but not limited to all documents evidencing the investment
8 of said funds.

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10 91. DISTRICT has at all times performed the terms of the contract in the manner
11 specified by the FINANCING AGREEMENT (Exhibit H) but CITY has failed and refused, and
12 continues to fail and refuse, to tender its performance as required by said contract.

13 92. CITY'S failure and refusal to perform its obligations under the FINANCING
14 AGREEMENT (Exhibit H) has damaged DISTRICT in an amount subject to proof in that
15 DISTRICT has incurred expenses in excess of what it would have otherwise been required to pay
16 pursuant to the FINANCING AGREEMENT (Exhibit H).

17 93. Beginning on the effective date of the PARTICIPATION AGREEMENT, CITY
18 failed to allocate the annual costs for the entire sewer system (treatment plant, trunk sewer and
19 collection system of the CITY and the DISTRICT), including maintenance, operation,
20 administration, repair and replacement, upgrading, debt service, insurance and financial services
21 between the CITY and the DISTRICT based upon the ratio of CITY and DISTRICT, sewer
22 service units for each year of operation, and overcharged the DISTRICT in an amount subject to
23 proof.
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1 94. At all times herein mentioned, CITY: acted in a fiduciary capacity with and for
2 the benefit of the DISTRICT; was the paying and receiving agent for DISTRICT; and, maintains
3 all records and accounts of the CITY and DISTRICT, including but not limited to records and
4 accounts relating to CITY and DISTRICT revenue, expenses, and sewer service units.

5 95. CITY represented to DISTRICT that the CITY-DISTRICT sewer service unit
6 ratios were accurate and on that basis charged the DISTRICT a disproportionate share of the
7 annual costs for treatment, including maintenance, operation, expansion, upgrading,
8 administration, insurance and financial services of the entire sewer system (treatment plant, trunk
9 sewer, and collection system).

10 96. DISTRICT further alleges that any money received by CITY on behalf of
11 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
12 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
13 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
14 ratio of CITY-DISTRICT sewer service units for each year of operation.

15 97. At the time these representations were made, DISTRICT was unaware of their
16 falsity, but believed them to be true. Had DISTRICT been aware of the true facts, DISTRICT
17 would not have agreed to make disproportionate payments to CITY.
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19 98. The concealment and misrepresentations of CITY, as more particularly set forth
20 in this Cause of Action, and the overcharging of DISTRICT for expenses not authorized by the
21 agreements or in the contemplation of the parties at the time the agreements were executed, were
22 continuing or reoccurring acts creating an indivisible course of conduct and the CITY'S breach
23 of contract and breach of fiduciary duty to the DISTRICT to maintain complete and accurate
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1 records and accounts relating to ESSU'S, revenue, and expenses, thereby causing damage to
2 DISTRICT in an amount subject to proof.

3 99. DISTRICT discovered the facts constituting the breach of contract and fiduciary
4 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
5 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
6 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

7 100. DISTRICT was unable to make an earlier discovery of the facts, as set forth in
8 this Cause of Action, constituting the breach of contract and fiduciary duty, in that DISTRICT
9 relied on the CITY to perform all functions as more particularly set forth in the
10 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
11 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
12 and collection services; acting as DISTRICT paying and receiving agent; comingling
13 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
14 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

15 101. As a direct and proximate result of CITY'S misrepresentations concerning the
16 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
17 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
18 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
19 collection system), DISTRICT has suffered damages in an amount subject to proof.

20 102. DISTRICT has at all times performed pursuant to the terms of the 1955
21 AGREEMENT (Exhibits A), as amended by the 1958 AGREEMENT (Exhibits C), 1966
22 AGREEMENT (Exhibits D) and 1985 AGREEMENT (Exhibits E), but CITY failed and refused
23 to tender its performance as required by said contracts.
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1 103. CITY'S failure and refusal to perform its obligations pursuant the terms of the
2 FINANCING AGREEMENT (Exhibits J) has damaged DISTRICT in that DISTRICT has
3 incurred expenses in excess of what it would have otherwise been required to pay, in an amount
4 subject to proof but believed to be approximately \$1,340,677.00, plus prejudgment interest in the
5 approximate amount of \$469,280.70 for an approximate total of \$1,809,957.70.

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1 THIRD CAUSE OF ACTION
2 (Breach of Fiduciary Duty)

3 COUNT I

4 (1955 AGREEMENT (Exhibit A), as amended by the 1958 AGREEMENT (Exhibit C),
5 1966 AGREEMENT (Exhibit D) and 1985 AGREEMENT (Exhibit E)

6 104. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through
7 7; and paragraphs 9 through 11; and, paragraphs 42 through 58.

8 105. On June 29, 1955, CITY and DISTRICT entered into a series of written contracts
9 relating to the operation and maintenance of a sewer system and treatment plant. The 1955
10 AGREEMENT (Exhibit A) was amended: twice in 1958 (1958 SUPPLEMENT (Exhibit B) and
11 1958 AGREEMENT (Exhibit C)); again in 1966 (1966 AGREEMENT (Exhibit D)); and, finally
12 in 1985 (1985 AGREEMENT (Exhibit E)). Said agreements created a fiduciary duty which
13 required CITY to act as trustee of the joint venture assets and to protect and preserve them until
14 the purpose of the joint venture was accomplished.

15 106. At all times herein mentioned, CITY acted in a fiduciary capacity with and for the
16 benefit of the DISTRICT and was the paying and receiving agent for DISTRICT and maintains
17 all records and accounts of the CITY and DISTRICT, including but not limited to records and
18 accounts relating to CITY and DISTRICT revenue, expenses, and sewer service units.

19 107. CITY represented to DISTRICT that the CITY-DISTRICT sewer service unit
20 ratios were accurate and on that basis charged the DISTRICT a disproportionate share of the
21 annual costs for treatment, including maintenance, operation, expansion, upgrading,
22 administration, insurance and financial services of the entire sewer system (treatment plant, trunk
23 sewer, and collection system).

1 108. At the time these representations were made, DISTRICT was unaware of their
2 falsity, but believed them to be true. Had DISTRICT been aware of the true facts, DISTRICT
3 would not have agreed to make disproportionate payments to CITY.

4 109. DISTRICT alleges that at all times herein mentioned the joint venture agreements
5 were in effect, they contained an implicit covenant of good faith and fair dealing requiring CITY
6 to safeguard, protect, and share all assets of the venture with DISTRICT. This covenant
7 prohibited CITY from any activity interfering with DISTRICT rights under the joint venture
8 agreement.

9 110. DISTRICT has repeatedly demanded that CITY account to DISTRICT for the
10 revenue derived from the joint venture of DISTRICT and CITY, but CITY has refused and
11 continues to refuse to give an accounting. Therefore, DISTRICT remains ignorant of the actual
12 amount of money received by CITY.

13 111. DISTRICT further alleges that any money received by CITY on behalf of
14 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
15 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
16 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
17 ratio of CITY-DISTRICT sewer service units for each year of operation.

18 112. As a direct and proximate cause of CITY failing to maintain complete records and
19 accounts each year relating to equivalent service units (ESSU'S) upon which cost apportionment
20 between CITY and DISTRICT shall be adjusted annually based upon the ratio of CITY to
21 DISTRICT equivalent sewer service units (ESSU'S), DISTRICT has been damaged in an
22 amount subject to proof.
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1 113. DISTRICT discovered the facts constituting the breach of fiduciary duty, as set
2 forth in this Cause of Action, at a time uncertain but being sometime on or after April 10, 2013,
3 at which time DISTRICT discovered a document which reflected that CITY was charging
4 DISTRICT based on the projected number of ESSU'S rather than the actual number of ESSU'S
5 as required by the 1966 AGREEMENT.

6 114. DISTRICT was unable to make an earlier discovery of the facts constituting the
7 breach of fiduciary duty, as set forth in this Cause of Action, in that DISTRICT relied on the
8 CITY to perform all functions on behalf of the DISTRICT pursuant to the terms of the 1955
9 AGREEMENT, as amended by the 1958 AGREEMENT, 1966 AGREEMENT, and 1985
10 AGREEMENT, including but not limited to: operating and maintaining the waste water
11 treatment plant and all DISTRICT trunk lines and laterals; calculating DISTRICT-CITY ESSU
12 ratios; performing all billing and collection services; acting as DISTRICT paying and receiving
13 agent; comingling DISTRICT-CITY funds; and, lack of an independent DISTRICT board.

14 115. As a direct and proximate result of CITY'S misrepresentations concerning the
15 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
16 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
17 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
18 collection system), DISTRICT has suffered damages in an amount subject to proof.

19 116. DISTRICT has at all times performed pursuant to the terms of the 1955
20 AGREEMENT (Exhibits A), as amended by the 1958 AGREEMENT (Exhibits C), 1966
21 AGREEMENT (Exhibits D) and 1985 AGREEMENT (Exhibits E), but CITY failed and refused
22 to tender its performance as required by said contracts.
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1 117. As a direct and proximate cause of CITY failing to maintain complete records and
2 accounts of all revenue collected by the CITY in accordance with the 1955 AGREEMENT
3 (Exhibit A), 1958 AGREEMENT (Exhibit C), 1966 AGREEMENT (Exhibit D), and 1985
4 AGREEMENT (Exhibit E), DISTRICT has been damaged in an amount subject to proof.

5 118. CITY'S failure and refusal to perform its obligations pursuant the terms of the
6 1955 AGREEMENT, as amended by the 1958 AGREEMENT (Exhibits C), 1966
7 AGREEMENT (Exhibits D) and 1985 AGREEMENT (Exhibits E), has damaged DISTRICT in
8 that DISTRICT has incurred expenses in excess of what it would have otherwise been required
9 to pay, in an amount subject to further discovery and proof but believed to be approximately
10 \$1,947,983.66, plus prejudgment interest in the approximate amount of \$4,740,416.78.
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COUNT II

(Breach of Fiduciary Duty - PARTICIPATION AGREEMENT (Exhibit F), as amended by AMENDMENT #1 (Exhibit H) and AMENDMENT # 2 (Exhibit I)

119. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through 7; paragraphs 13 through 16; paragraphs 18 and 19; and, paragraphs 21 through 32; paragraphs 60 through 84.

120. The PARTICIPATION AGREEMENT (Exhibit F) dated June 10, 1995, as amended by AMENDMENT # 1 (Exhibit H), and AMENDMENT # 2 (Exhibit I), imposed on CITY, a fiduciary duty that existed during the entirety of their terms, from June 10, 1995 until the present.

121. The fiduciary duty created by the hereinabove referred to PARTICIPATION AGREEMENT (Exhibit F), AMENDMENT # 1 (Exhibit H), and AMENDMENT # 2 (Exhibit I), required CITY to act as trustee of the joint venture assets and to protect and preserve them until the purpose of the joint venture was accomplished. The purpose of the joint venture has not been accomplished so that CITY'S duty has not been extinguished.

122. CITY was the paying and receiving agent for all DISTRICT operation and maintenance funds (PARTICIPATION AGREEMENT, paragraph 1, page 1 (Exhibit F); AMENDMENT #1, paragraph 1, page 1 (Exhibit H)).

123. As the paying and receiving agent for all DISTRICT operation and maintenance funds (PARTICIPATION AGREEMENT (Exhibit F); AMENDMENT #1 (Exhibit H)), CITY breached its fiduciary duty to act as trustee of the joint venture assets and to protect and preserve them until the purpose of the joint venture was accomplished.

124. CITY failed to hire a licensed civil engineer to oversee the design and construction of the waste water treatment plant.

1 125. DISTRICT alleges that at all times herein mentioned the joint venture agreements
2 were in effect, they contained an implicit covenant of good faith and fair dealing requiring CITY
3 to safeguard, protect, and share all assets of the venture with DISTRICT. This covenant
4 prohibited CITY from any activity interfering with DISTRICT rights under the joint venture
5 agreement.

6 126. DISTRICT has repeatedly demanded CITY account to DISTRICT for the revenue
7 derived from the joint venture of DISTRICT and CITY, but CITY has refused and continues to
8 refuse to give an accounting. Therefore, DISTRICT remains ignorant of the actual amount of
9 money received by CITY.

10 127. DISTRICT further alleges that any money received by CITY on behalf of
11 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
12 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
13 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
14 ratio of CITY-DISTRICT sewer service units for each year of operation.

15 128. DISTRICT discovered the facts constituting the breach of contract and fiduciary
16 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
17 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
18 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

19 129. DISTRICT was unable to make an earlier discovery of the facts, as set forth in
20 this Cause of Action, constituting the breach of contract and fiduciary duty, in that DISTRICT
21 relied on the CITY to perform all functions as more particularly set forth in the
22 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
23 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
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1 and collection services; acting as DISTRICT paying and receiving agent; comingling
2 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
3 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

4 130. As a direct and proximate cause of CITY failing to maintain complete records and
5 accounts of all revenue collected by the CITY in accordance with the PARTICIPATION
6 AGREEMENT (Exhibit F) as amended by AMENDMENT # 1 (Exhibit H) and AMENDMENT
7 # 2 (Exhibit I) and apply such revenues to pay the DISTRICT PAYMENTS on behalf of the
8 DISTRICT pursuant to the financing agreement, DISTRICT has been damaged in an amount
9 subject to proof.

10 131. As a direct and proximate cause of CITY failing to maintain complete records and
11 accounts each year relating to equivalent service units (ESSU'S) upon which cost apportionment
12 between CITY and DISTRICT shall be adjusted annually at the beginning of each fiscal year of
13 operation based upon the ratio of CITY to DISTRICT equivalent sewer service units (ESSU'S)
14 on record as of March 31 each year, DISTRICT has been damaged in an amount subject to proof.

15 132. As a result of the failure of the CITY to perform as more particularly set forth
16 above, DISTRICT alleges that it has been damaged in an amount subject to proof .

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COUNT III

(Breach of Fiduciary Duty - FINANCING AGREEMENT (Exhibit J))

133. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through 7; paragraph 17 through 19; paragraphs 34 through 40; paragraphs 60 through 103; and, paragraphs 120 through 132.

134. On or about March 2, 2006, DISTRICT and CITY entered into the FINANCING AGREEMENT (Exhibit J).

135. The FINANCING AGREEMENT (Exhibit J), created a fiduciary duty during the entirety of their terms, from March 2, 2006, until the present, which required CITY to act as trustee of the joint venture assets and to protect and preserve them until the purpose of the joint venture was accomplished.

136. DISTRICT discovered the facts constituting the breach of fiduciary duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

137. DISTRICT was unable to make an earlier discovery of the facts, as set forth in this Cause of Action, constituting the breach fiduciary duty, in that DISTRICT relied on the CITY to perform all functions as more particularly set forth in the PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2, including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing and collection services; acting as DISTRICT paying and receiving agent; comingling DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

1 138. DISTRICT has at all times performed the terms of the contracts in the manner
2 specified by the FINANCING AGREEMENT (Exhibit J) and PARTICIPATION
3 AGREEMENT, as amended (Exhibits F, H and I) but CITY has failed and refused, and
4 continues to refuse, to tender its performance as required by the FINANCING AGREEMENT
5 (Exhibit J) and PARTICIPATION AGREEMENT, as amended (Exhibits F, H and I).

6 139. DISTRICT alleges that at all times herein mentioned the joint venture agreements
7 were in effect, they contained an implicit covenant of good faith and fair dealing requiring CITY
8 to safeguard, protect, and share all assets of the venture with DISTRICT. This covenant
9 prohibited CITY from any activity interfering with DISTRICT rights under the joint venture
10 agreement.

11 140. DISTRICT has repeatedly demanded that CITY account to DISTRICT for the
12 revenue derived from the joint venture of DISTRICT and CITY, but CITY has refused and
13 continues to refuse to give an accounting. Therefore, DISTRICT remains ignorant of the actual
14 amount of money received by CITY.

15 141. DISTRICT further alleges that any money received by CITY on behalf of
16 DISTRICT is an asset of the DISTRICT who is entitled to retain the net balance of said monies
17 on account for its sole and exclusive benefit, after payment of DISTRICT'S proportionate share
18 of the actual costs and expenses which are incurred on behalf of the joint venture, based upon the
19 ratio of CITY-DISTRICT sewer service units for each year of operation.
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21 142. As a direct and proximate cause of CITY failing to maintain complete records and
22 accounts of all revenue collected by the CITY in accordance with the FINANCING
23 AGREEMENT (Exhibit J) and PARTICIPATION AGREEMENT, as amended (Exhibits F, H
24 and I), DISTRICT has been damaged in an amount subject to proof.
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1 143. As a direct and proximate cause of CITY failing to maintain complete records and
2 accounts each year relating to equivalent service units (ESSU'S) upon which cost apportionment
3 between CITY and DISTRICT shall be adjusted annually based upon the ratio of CITY to
4 DISTRICT equivalent sewer service units (ESSU'S), DISTRICT has been damaged in an
5 amount subject to proof.

6 144. CITY'S failure and refusal to perform its obligations under the contract has
7 damaged DISTRICT in the DISTRICT has incurred costs and expenses in excess of what it
8 would have otherwise been required to pay pursuant to the FINANCING AGREEMENT
9 (Exhibit J) and the PARTICIPATION AGREEMENT as amended (Exhibits F, H, I), in an
10 amount subject to proof.

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FOURTH CAUSE OF ACTION
(Rescission and Restitution)

COUNT I
(PARTICIPATION AGREEMENT (Exhibit F) and
AMENDMENT # 1 (Exhibit H) and AMENDMENT # 2 (Exhibit I))

145. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through 7; paragraphs 13 through 16; paragraphs 18 and 19; paragraphs 21 through 32; paragraphs 60 through 84; and, paragraphs 119 through 132.

146. According to a report prepared by Bernie Ziemianek, Public Utilities Director, City of Ukiah, dated September 15, 2004 and presented to the DISTRICT at its meeting on September 23, 2004, the "existing 77/23 proportion was based on historical connections where the pattern was a linear growth fit" (2004-09-15; UVSD 8077). The report went on to state that there were 12,044 "existing" ESSU's which were divided DISTRICT, 54.8%; CITY, 45.1% [sic] and that said percentages for the CEPT program which added an additional 2400 ESSU's, would be divided DISTRICT, 77%; CITY, 23%. Said report is in direct conflict with other reports prepared by the CITY, which show as of March 31, 2004, although there were 12,044 ESSU's, they were divided DISTRICT, 5,440 ESSU'S; CITY 6,604 ESSU'S. Said division equates to a ratio of DISTRICT, 45.2%; CITY, 54.8%.

147. CITY'S contention there is "historical" data for any time period prior to 2004 that the ESSU'S were divided on basis of DISTRICT, 77%, CITY, 23% was false. According to CITY records, at no time since 1955 have the "actual" DISTRICT ESSU'S exceeded 51.34% of the total CITY-DISTRICT sewer service units.

148. CITY misrepresented to the DISTRICT the number of ESSU'S in the CITY and DISTRICT, including the over-lap area, for the purpose of inducing the DISTRICT to enter into AMENDMENT # 2 (Exhibit I) whereby DISTRICT would be financially committed to a greater

1 percentage of the debt service on the proposed seventy-three million dollar (\$75,060,000) bond
2 issue than the actual ratio of DISTRICT-CITY ESSU's would require.

3 149. When CITY made the representations described herein, CITY knew those
4 representations to be false and made them with the intent to induce DISTRICT into entering into
5 AMENDMENT # 2 (Exhibit I).

6 150. DISTRICT believed CITY's representations described herein to be true and CITY
7 gave DISTRICT no reason to believe that they were false.

8 151. On or about December 15, 2004, DISTRICT entered into AMENDMENT # 2 to
9 the PARTICIPATION AGREEMENT (Exhibit F) with CITY.

10 152. At the time DISTRICT entered into AMENDMENT # 2 (Exhibit I), the
11 DISTRICT was ignorant of the true facts and were relying on the representations made by
12 employees of the CITY that the facts they presented to the DISTRICT were true.

13 153. DISTRICT discovered the facts constituting the breach of contract and fiduciary
14 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
15 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
16 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

17 154. DISTRICT was unable to make an earlier discovery of the facts, as set forth in
18 this Cause of Action, constituting the breach of contract and fiduciary duty, in that DISTRICT
19 relied on the CITY to perform all functions as more particularly set forth in the
20 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
21 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
22 and collection services; acting as DISTRICT paying and receiving agent; comingling
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1 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
2 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

3 155. At the time DISTRICT and CITY entered into AMENDMENT # 2 (Exhibit I),
4 DISTRICT and CITY were anticipating a bond issue which would increase the treatment plant
5 capacity, which is defined therein as the "Capacity Project", in addition to an
6 "Upgrading/Rehabilitation Project", for a combined cost of \$75,060,000.00.

7 156. DISTRICT has at all times performed the terms of the contract in the manner
8 specified by the PARTICIPATION AGREEMENT (Exhibit F), and AMENDMENTS #1 and # 2
9 (Exhibits H and I).

10 157. These facts constitute grounds for **rescission** of the contract under California *Civil*
11 *Code* § 1689(b)(1) and *Civil Code* § 1689(b)(6).

12 158. As a result of the CITY'S representations as more particularly set forth herein,
13 DISTRICT has been paying: a disproportionate share of the expenses for the wastewater
14 treatment plant (PARTICIPATION AGREEMENT (Exhibit F); AMENDMENT # 1 (Exhibit H);
15 and, AMENDMENT # 1 (Exhibit # I)); and, a disproportionate share of the interest and principal
16 payments on the \$75,060,000 bond issue pursuant to the FINANCING AGREEMENT (Exhibit
17 J), thereby being damaged in an amount subject to proof.

18 159. DISTRICT discovered the facts constituting the breach of contract and fiduciary
19 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
20 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
21 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

22 160. DISTRICT was unable to make an earlier discovery of the facts constituting the
23 breach of contract and fiduciary duty, as set forth in this Cause of Action, in that DISTRICT
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1 relied on the CITY to perform all functions as more particularly set forth in the
2 PARTICIPATION AGREEMENT (Exhibit I), as amended by AMENDMENT # 1 and
3 AMENDMENT # 2 (Exhibits H and I), including but not limited to: calculating DISTRICT-
4 CITY ESSU ratios; performing all billing and collection services; acting as DISTRICT paying
5 and receiving agent; comingling DISTRICT-CITY funds; operating and maintaining the waste
6 water treatment plant and all DISTRICT trunk lines and laterals; and, lack of an independent
7 DISTRICT board.

8 161. As a direct and proximate result of CITY'S misrepresentations concerning the
9 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
10 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
11 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
12 collection system), DISTRICT has suffered damages in an amount subject to proof.

13 162. As a direct and proximate result of CITY's wrongful acts as described herein,
14 CITY has no legal or equitable right, claim or interest therein, but instead is an involuntary
15 trustee holding DISTRICT funds in constructive trust for DISTRICT, to prevent unjust
16 enrichment by CITY pursuant to *California Civil Code* § 2223 and § 2224.

17 163. As a direct and proximate cause of CITY failing to maintain complete records and
18 accounts of all revenue collected by the CITY in accordance with the FINANCING
19 AGREEMENT (Exhibit J) and PARTICIPATION AGREEMENT, as amended (Exhibits F, H
20 and I), CITY is an involuntary trustee holding DISTRICT funds in resulting trust for DISTRICT,
21 to prevent unjust enrichment by CITY pursuant to *California Civil Code* § 2223 and § 2224.

22 164. As a direct and proximate cause of CITY failing to maintain complete records and
23 accounts each year relating to equivalent service units (ESSU'S) upon which cost apportionment
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1 between CITY and DISTRICT shall be adjusted annually based upon the ratio of CITY to
2 DISTRICT equivalent sewer service units (ESSU'S), CITY is an involuntary trustee holding
3 DISTRICT funds in resulting trust for DISTRICT, to prevent unjust enrichment by CITY
4 pursuant to *California Civil Code* § 2223 and § 2224.

5 165. CITY'S failure and refusal to perform its obligations under the contract has
6 damaged DISTRICT in that DISTRICT has incurred costs and expenses in excess of what it
7 would have otherwise been required to pay pursuant to the PARTICIPATION AGREEMENT as
8 amended (Exhibits F, H, I), therefore, CITY is an involuntary trustee holding DISTRICT funds
9 in resulting trust for DISTRICT, to prevent unjust enrichment by CITY pursuant to *California*
10 *Civil Code* § 2223 and § 2224.

11 166. DISTRICT has at all times performed the terms of the contract in the manner
12 specified by the FINANCING AGREEMENT (Exhibit J) **and** PARTICIPATION
13 AGREEMENT as amended (Exhibits F, H and I).

14 167. These facts constitute grounds for **rescission** of the contract under *California Civil*
15 *Code* § 1689(b)(1) and *Civil Code* § 1689(b)(6).

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COUNT II

(Rescission and Restitution – FINANCING AGREEMENT (Exhibit J))

168. DISTRICT realleges and incorporates herein by reference, paragraphs 1 through 7; paragraphs 13 through 19; paragraphs 60 through 103; and, paragraphs 134 through 167.

169. On or about March 3, 2006, DISTRICT entered into the FINANCING AGREEMENT (Exhibit J) with CITY.

170. When CITY made the representations described in paragraphs 146 and 147 of this complaint, CITY knew those representations to be false and made them with the intent to induce DISTRICT into entering into the AMENDMENT #2 (Exhibit I).

171. DISTRICT believed CITY's representations described in paragraph 146 and 147 of this complaint to be true and CITY gave DISTRICT no reason to believe that they were false.

172. Based on those misrepresentations, DISTRICT and CITY entered into the AMENDMENT #2 (Exhibit I) wherein it was provided in part:

- a. "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."; and,
- b. "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.

173. According to CITY records, at no time since 1955 have the "actual" DISTRICT ESSU'S exceeded 51.34% of the total CITY-DISTRICT sewer service units.

1 174. At the time DISTRICT entered into the FINANCING AGREEMENT (Exhibit J),
2 the DISTRICT was ignorant of the true facts and was relying on the representations made by
3 employees of the CITY that the facts they presented to the DISTRICT were true.

4 175. DISTRICT discovered the facts constituting the breach of contract and fiduciary
5 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
6 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
7 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

8 176. DISTRICT was unable to make an earlier discovery of the facts, as set forth in
9 this Cause of Action, constituting the breach of contract and fiduciary duty, in that DISTRICT
10 relied on the CITY to perform all functions as more particularly set forth in the
11 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
12 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
13 and collection services; acting as DISTRICT paying and receiving agent; comingling
14 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
15 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board.

17 177. At the time DISTRICT and CITY entered into FINANCING AGREEMENT
18 (Exhibit J), DISTRICT and CITY were anticipating a bond issue which would increase the
19 treatment plant capacity, for a combined cost of \$75,060,000.00.

20 178. As a result of the CITY'S misrepresentations as more particularly set forth above,
21 DISTRICT has been paying: a disproportionate share of the expenses for the wastewater
22 treatment plant and interest and principal payments on the \$75,060,000 bond issue pursuant to
23 the FINANCING AGREEMENT (Exhibit J), thereby being damaged in an amount subject to
24 proof. The concealment and misrepresentations of CITY, as more particularly set forth herein,
25
26

1 and the overcharging of DISTRICT for expenses not authorized by the agreements or in the
2 contemplation of the parties at the time the agreements were executed, were continuing or
3 reoccurring acts creating an indivisible course of conduct and the CITY'S breach of contract and
4 breach of fiduciary duty to the DISTRICT to maintain complete and accurate records and
5 accounts relating to ESSU'S, revenue, and expenses, thereby causing damage to DISTRICT in
6 an amount subject to proof.

7 179. As a result of CITY's misrepresentations, DISTRICT has been paying a
8 disproportionate share of the expenses for the wastewater treatment plant, interest and principal
9 payments on the \$75,060,000 bond issue pursuant to the FINANCING AGREEMENT (Exhibit
10 J), therefore, CITY is an involuntary trustee holding DISTRICT funds in resulting trust for
11 DISTRICT, to prevent unjust enrichment by CITY pursuant to *California Civil Code* § 2223 and
12 § 2224.
13

14 180. CITY comingled DISTRICT'S Rate Stabilization Fund in a common fund with
15 other CITY funds on which CITY profited and has failed and refused to account to DISTRICT
16 for any gain in the value of the investment or any revenue earned thereon.

17 181. DISTRICT has funds held by CITY in a Rate Stabilization Fund, and CITY, after
18 being requested to do so by the DISTRICT, refused to transfer all fund held in the Rate
19 Stabilization Fund to the Mendocino County Auditor.

20 182. As a result of CITY's failure to withdraw, for DISTRICT's benefit all rate
21 stabilization funds, CITY is an involuntary trustee holding DISTRICT funds in resulting trust for
22 DISTRICT, to prevent unjust enrichment by CITY pursuant to *California Civil Code* § 2223 and
23 § 2224.
24
25
26

1 183. As a direct and proximate result of CITY's wrongful acts as described herein,
2 CITY has no legal or equitable right, claim or interest therein, but instead is an involuntary
3 trustee holding DISTRICT funds in constructive trust for DISTRICT, to prevent unjust
4 enrichment by CITY pursuant to *California Civil Code* § 2223 and § 2224.

5 184. DISTRICT discovered the facts constituting the breach of contract and fiduciary
6 duty, as set forth in this Cause of Action, at a time uncertain but being sometime on or after
7 November 2, 2011, when DISTRICT discovered CITY was collecting revenue generated from
8 numerous ESSU'S located in the DISTRICT which was credited to CITY accounts.

9 185. DISTRICT was unable to make an earlier discovery of the facts constituting the
10 breach of contract and fiduciary duty, as set forth in this Cause of Action, in that DISTRICT
11 relied on the CITY to perform all functions as more particularly set forth in the
12 PARTICIPATION AGREEMENT, as amended by AMENDMENT # 1 and AMENDMENT # 2,
13 including but not limited to: calculating DISTRICT-CITY ESSU ratios; performing all billing
14 and collection services; acting as DISTRICT paying and receiving agent; comingling
15 DISTRICT-CITY funds; operating and maintaining the waste water treatment plant and all
16 DISTRICT trunk lines and laterals; and, lack of an independent DISTRICT board

17 186. As a direct and proximate result of CITY'S misrepresentations concerning the
18 CITY-DISTRICT sewer service unit ratios and the CITY overcharging DISTRICT for the annual
19 costs for treatment, including maintenance, operation, expansion, upgrading, administration,
20 insurance and financial services of the entire sewer system (treatment plant, trunk sewer, and
21 collection system), DISTRICT has suffered damages in an amount subject to further discovery
22 and proof.
23
24
25
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1 187. DISTRICT has at all times performed the terms of the contract in the manner
2 specified by the FINANCING AGREEMENT (Exhibit J) **and** PARTICIPATION
3 AGREEMENT as amended (Exhibits F, H and I).

4 188. Service of this complaint on CITY shall be deemed giving CITY notice of
5 rescission pursuant to California *Civil Code* § 1691(b).

6 189. These facts constitute grounds for **rescission** of the contract under California *Civil*
7 *Code* § 1689(b)(1) and *Civil Code* § 1689(b)(6).

8 ///

9 ///

10 ///

11 ///

1 PRAYER

2 WHEREFORE, DISTRICT prays for judgment as follows:

3 1. FIRST CAUSE OF ACTION (Declaratory Relief):

4 a. Count I - A declaration of the Court that the CITY is in material breach of the
5 PARTICIPATION AGREEMENT (Exhibits F), AMENDMENT # 1 (Exhibit
6 H) and AMENDMENT # 2 (Exhibit I), for declarations as set forth in
7 Paragraph 30 (a) through (zz), inclusive;

8 b. Count II - A declaration of the Court that the CITY is in material breach of the
9 FINANCING AGREEMENT (Exhibit J), for declarations as set forth in
10 Paragraphs 38 (a) through (q), inclusive and those portions of paragraph 30
11 that are incorporated therein by reference;

12 c. As to both Counts:

13 (1) A declaration that the DISTRICT shall be the paying and receiving agent
14 for all DISTRICT operation and maintenance funds;

15 (2) A declaration that management and control of the sewer treatment plant
16 and any additions or changes to it shall be in the DISTRICT and that
17 DISTRICT shall maintain said plant and furnish personnel for the
18 maintenance, operation and control of said plant and shall also service and
19 maintain the trunk lines and collection lines;

20 (3) A declaration that DISTRICT shall operate, maintain and repair
21 DISTRICT'S sewage collection system, including all sewer mains and
22 laterals constructed within the CITY as part of its sewer collection system;

- 1 (4) A declaration that each of the parties has an ownership interest in the
2 waste water treatment plant and all assets that have been purchased with
3 joint or several funds equal to their proportionate share of payments;
4 (5) A declaration that the annual costs for treatment, including maintenance
5 operation, expansion, upgrading, administration, insurance and financial
6 services of the entire sewer system (treatment plant, trunk sewer, and
7 collection system) shall be apportioned by the DISTRICT between the
8 CITY and DISTRICT each year based upon the ratio of CITY to
9 DISTRICT sewer service units for each year of operation;
10 (6) A declaration that cost apportionment between CITY and DISTRICT, as
11 described above, shall be adjusted annually by the DISTRICT at the
12 beginning of each fiscal year of operation based upon the ratio of CITY to
13 DISTRICT equivalent sewer service units on record as of March 31 each
14 year.
15

16 2. SECOND CAUSE OF ACTION (Breach of Contract):

- 17 a. Count I - Damages for breach of the PARTICIPATION AGREEMENT,
18 (Exhibit F), AMENDMENT # 1 (Exhibit H) and AMENDMENT # 2 (Exhibit
19 I), as amended, in an amount according to proof;
20 b. Count II - Damages for breach of the FINANCING AGREEMENT (Exhibit
21 J), in an amount according to proof.
22

23 3. THIRD CAUSE OF ACTION (Breach of Fiduciary Duty):

- 24 a. Count I – Damages for breach of Fiduciary Duty by the CITY in the
25 performance or nonperformance of its duties pursuant to the
26

1 PARTICIPATION AGREEMENT, (Exhibit F), AMENDMENT # 1 (Exhibit
2 H) and AMENDMENT # 2 (Exhibit I), as amended, in an amount according
3 to proof

4 b. Count II – Damages for breach of Fiduciary Duty by the CITY in the
5 performance or nonperformance of its duties pursuant to the FINANCING
6 AGREEMENT (Exhibit J), in an amount according to proof;

7 4. FOURTH CAUSE OF ACTION (Rescission and Restitution) :

8 a. Count I - A declaration that the PARTICIPATION AGREEMENT (Exhibit
9 F), AMENDMENT # 1 (Exhibits H) and AMENDMENT # 2 (Exhibits I), are
10 rescinded and that CITY is ordered to pay restitution to the DISTRICT in an
11 amount according to proof;

12 b. Count II - A declaration that the FINANCING AGREEMENT (Exhibit J) is
13 rescinded and that CITY is ordered to pay restitution to the DISTRICT in an
14 amount according to proof;

15 c. A declaration that all funds collected by CITY since 1995 are subject to a
16 constructive trust for the benefit of DISTRICT.

17 d. A declaration that all funds not properly allocated by CITY since 1995 are
18 subject to a resulting trust.

19 5. AS TO ALL CAUSES OF ACTION:

20 a. An order to appointing a Special Master to handle all income and expenses
21 arising out of the operation of the entire sewer system (treatment plant, trunk
22 sewer, and collection system) pending the final judgment in this matter.

- 1 b. An accounting of all revenue collected by the CITY for its own benefit and
2 that of the DISTRICT;
3 c. An order declaring that CITY holds the revenue collected for the benefit of
4 the joint venture in a trust for the benefit of the DISTRICT;
5 d. An order requiring CITY to pay DISTRICT in an amount to be shown
6 according to proof;
7 e. Prejudgment interest at the legal rate
8 f. Attorneys' fees;
9 g. For costs of suit incurred herein; and,
10 h. For such other and further relief the court considers just proper.

11
12 Dated: October 17, 2013

UKIAH VALLEY SANITATION DISTRICT

13
14 /s/ James Ronco

15 By: JAMES RONCO, Chairperson
16 Board of Directors,
UKIAH VALLEY SANITATION DISTRICT

EXHIBIT “A”

AGREEMENT

THIS AGREEMENT, made this 22nd day of June, 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 OKLAHOMA VALLEY SANITATION DISTRICT hereby agrees, subject to availability of necessary financing, to construct a sewerage trunk line extending from Ford Road, northern 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 OKLAHOMA. 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 UKIAH 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.

UKIAH VALLEY SANITATION DISTRICT

By Paul H. Paulsen

By James E. Smith

By James E. Smith

CITY OF UKIAH,

By Herbert R. Smith

ATTEST: Herbert R. Smith
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 G. Wagner
Mayor

ATTEST: A. Dahlberg

UKIAH VALLEY SANITATION DISTRICT

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

Attest: /s/ Edith Beck

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 T 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 ^{Not} 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 [Signature]
23 By [Signature]
24 By [Signature]
25
26

27 CITY OF UKIAH

28 By [Signature]
29 MAYOR

30 ATTEST:

31 [Signature]
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. Myer
17 Chairman

18
19 ATTEST:

20 Virginia Goodacre
21 Secretary

22 CITY OF UKIAH

23
24 By: Charles S. Myer
25 Mayor

26 ATTEST:

27
28 R. Kent Payne
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 Phuntis
Mayor

UKIAH VALLEY SANITATION DISTRICT

By Frank Mc Michael
Chairperson

ATTEST:

City Clerk

Kristin 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:

Kurt 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.

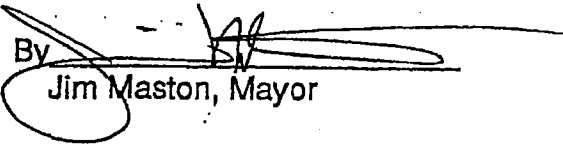
6.3.5 Each party must act in good faith in considering the decision and should accept the decision unless the decision is contrary to law, clearly erroneous or in direct conflict with written ordinances or policies adopted by the party before the dispute arose. The decision shall be deemed approved by 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.

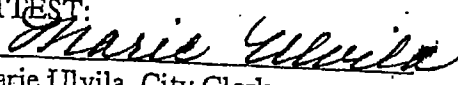
7. No Third Party Beneficiaries. Unless otherwise agreed in bond indentures or other agreements or documents prepared in connection with financing the Project, which documents have been approved by the governing bodies of the Parties and signed by authorized

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.

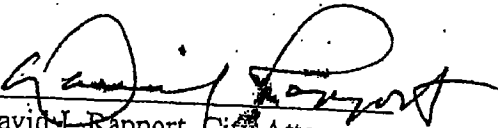
WHEREFORE, the Parties have entered this Agreement on the Effective Date.

CITY OF UKIAH

By 
Candace Horsley, City Manager

ATTEST:

Marie Ulvila, City Clerk

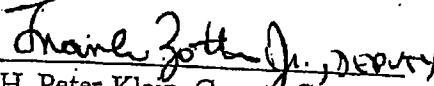
Approved as to form:


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

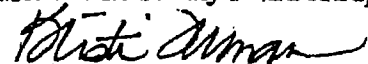


EXHIBIT “J”

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.

AGREEMENT:

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.

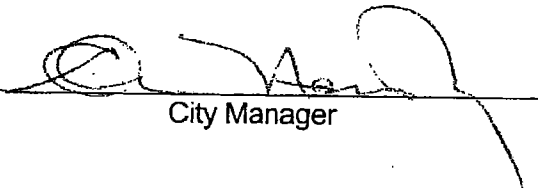
SECTION 6. *Information to Bond Insurer.* The District shall cooperate with XL Capital Assurance Inc., as insurer of the Authority Bonds (the "Bond Insurer") in all regards as may be required to comply with the terms and provisions of the Bond Insurance Policy relating to the Authority Bonds, and as 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.

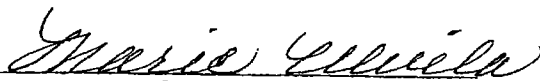
SECTION 8. *Binding Effect.* This Agreement inures to the benefit of and is binding on the Authority, the City, the District, the Bond Insurer and their respective successors and assigns, subject to the limitations contained herein. The Authority and the Bond Insurer are hereby made third party beneficiaries 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

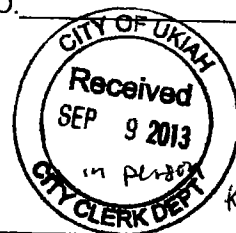
EXHIBIT “K”

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:

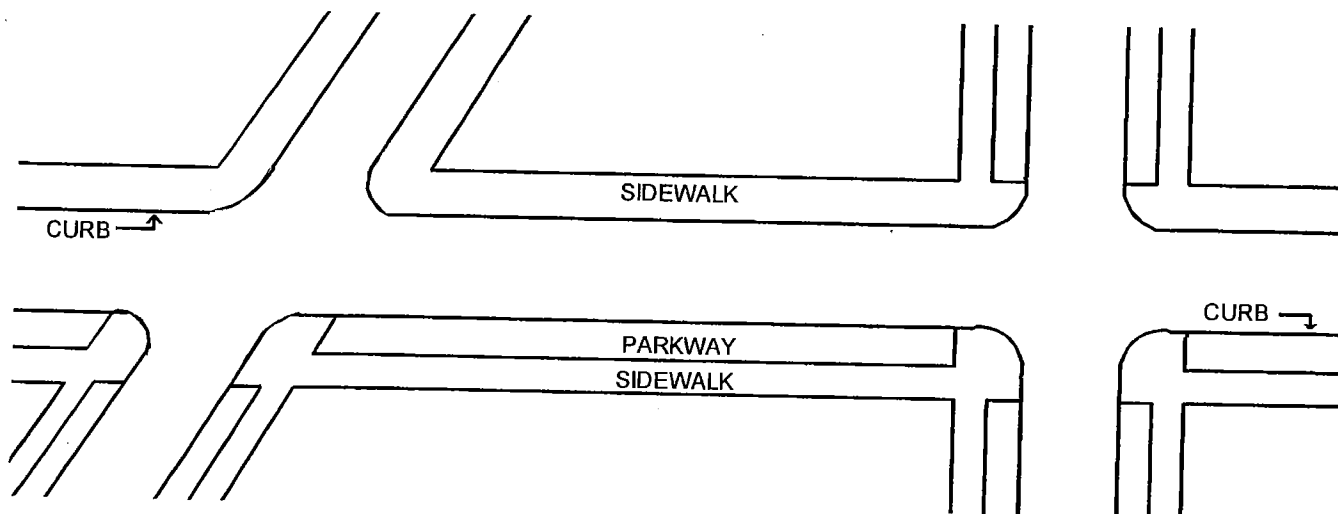
If applicable, please attach any repair bills, estimates or similar documents supporting your claim.

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
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.

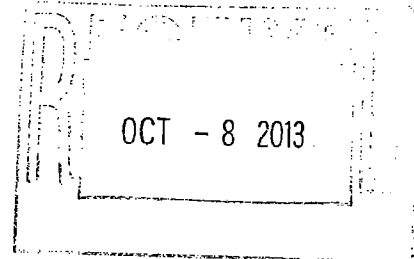
EXHIBIT “L”

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,

Melody Harris

Melody Harris
Risk Manager

cc: REMIF
Dave Rapport, City Attorney

EXHIBIT “M”

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
Melody Harris
Risk Manager

Certified Mail #7011 0470 0003 3786 5563

C: Dave Rapport, City Attorney