AGENDA
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

DATE: June 11, 2015
TIME: 6:00 p.m. Executive Closed Session
       7:00 p.m. Regular Session
PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 at least 24 hours in advance of the meeting.

1. Call to Order at 6:00 p.m.
   a. Move to Executive Closed Session pursuant to the provisions of the California Government Code Section 54956.9 (Threatened Litigation).
      1. Threatened Litigation
         a. USEPA Settlement Agreement

2. Adjourn Executive Closed Session

3. Call to Order Regular Session at 7:00 P.M. and Roll Call

4. Pledge of Allegiance

5. Report on Executive Session

6. Public Comment
   Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

7. Consent Calendar
   a. Consideration of approval of minutes from the May 28, 2015 Board Meeting.

8. Communications and Reports
   a. Executive Directors Report
      • EPA Clean Up
      • Woodley Island Restrooms
   b. Staff Reports
   c. District Counsel, District Planner and District Treasurer Reports
   d. Commissioner and Committee Reports
   e. Other

9. Non Agenda

10. Unfinished Business
Agenda for June 11, 2015 Regular Board Meeting

11. New Business
   a. Consideration of a Proclamation in Support of the Vessel GOLDEN RULE.
   b. Consideration of approval of Settlement Agreement for Recovery of Past Response Costs with United States Environmental Protection Agency Region IX.
   c. Consideration to hire Advanced Appraisal International to appraise 771 acres of Humboldt Bay tidelands for $7,500.
   d. Consideration of adoption of Resolution 20115-10, A Resolution Establishing Rules and Fees for Direct Sales from Vessels at Woodley Island Marina.
   e. First Reading of Ordinance No. 19, Right to Fish Ordinance.
   f. Consideration of approval of contract with Redwood Electrical Services for restoration of power to Redwood Marine Terminal Berth 1 – Building 3 for $19,999.00.
   g. Discussion – Woodley Island Oyster Bar Restaurant.

12. Administrative and Emergency Permits

13. Adjournment
PRESENT:
Commissioner Newman
Commissioner Dale
Commissioner Marks
Commissioner Wilson

ABSENT:
Commissioner Higgins

President Marks called the Executive Closed Session to order at 6:01 p.m.

Kent Sawatzky told the Board that he would like to see as many small leases as possible be approved through the mariculture pre-permitting project. It is good to see new blood enticed to and creating jobs in Humboldt Bay.

The Board then moved into Executive Closed Session. Commissioner Dale recused himself.

President Marks adjourned the Executive Closed Session at 6:23 p.m.

President Marks called the regular meeting of the Board of Commissioners to order at 7:03 p.m.

Commissioner Wilson led those present in the Pledge of Allegiance.

District Counsel reported on the Executive Closed Session as follows: Status of Conference with Real Property Negotiator. Once Commissioner Dale recused himself, the Board discussed the subject Pre-Permitted Oyster Leases. No action taken.

PUBLIC COMMENT

Susan Penn said based on the District's Profit & Loss Statement of January 31, 2015 this fiscal year will end in a deficit of $1 million. She suggested that prior to spending more money on Redwood Terminal 2, revenue should be brought in from additional tenants.

Kent Sawatzky said in 20 years there will be 9 billion people on earth. Humboldt County has stored water and everything to survive when Mother Nature does her thing. He also said good, viable tenants are needed at Redwood Terminal 2 or it will not be able to sustain itself. New tenants should have the option to purchase the property in order to put it back on the County's tax rolls.

Sebastian Elrite, Aqua-Rodeo Farms, said in April Executive Director mentioned SB141 regarding tide and submerged lands in Humboldt Bay was going through the process at the State level. He said he was curious what the Board thought about the wording changes and the District needs to understand its obligations through common law doctrine.

CONSENT CALENDAR: None

COMMUNICATIONS AND REPORTS

EXECUTIVE DIRECTOR'S REPORT: None

STAFF REPORTS: None

DISTRICT COUNSEL, DISTRICT PLANNER AND DISTRICT TREASURER REPORTS: None.
COMMISSIONER AND COMMITTEE REPORTS:

Commissioner Wilson:
- 5/27 – TalkShop on KINS radio.
- Attended with Deputy Director and District Planner the Eureka City Council/Planning Commission meeting on the General Plan Update regarding zoning changes for Woodley Island. He said there was a split vote on how to move forward with the requested zoning changes.
- The vessel Golden Rule, which has a long history, specifically the first boat used to protest nuclear arms, will be launched on June 20th after a lengthy restoration. Commissioner Wilson encouraged the Board to approve a proclamation at the next Board meeting.

OTHER: None

UNFINISHED BUSINESS

A. CONSIDERATION OF ADOPTION OF RESOLUTION 2015-06, A RESOLUTION ESTABLISHING RATES FOR OFFLOADING SEAFOOD AT DISTRICT PROPERTIES.

Deputy Director reported this item was discussed at the last Board meeting. The concept is consistent with other ports.

COMMISSIONER WILSON MOVED FOR THE ADOPTION OF RESOLUTION 2015-06, A RESOLUTION ESTABLISHING RATES FOR OFFLOADING SEAFOOD AT DISTRICT PROPERTIES. COMMISSIONER DALE SECONDED.

Commissioner Newman said he never understood why this has not been done before now.

Zack Rotwein said his biggest concern is the City of Eureka adopted the same type of policy for their public hoists. After about six months, they leased the hoists to two companies who “locked” up the hoists and small buyers could not utilize the facility. As long as this scenario does not happen at Harbor District properties, it will be good for the industry.

President Marks said he envisions this will be an enhancement and open up opportunities.

ROLL CALL VOTE WAS TAKEN:
- COMMISSIONER NEWMAN – AYE
- COMMISSIONER DALE – AYE
- COMMISSIONER MARKS – AYE
- COMMISSIONER WILSON – AYE
- COMMISSIONER HIGGINS – ABSENT

MOTION CARRIED WITHOUT DISSENT.

B. CONSIDERATION OF ADOPTION OF RESOLUTION 2015-07, A RESOLUTION ESTABLISHING PROTOCOLS FOR SECURING CREDIT CARD INFORMATION FROM TENANTS TO ALLOW FOR AUTOMATIC PAYMENTS.

Deputy Director stated a qualified third party payment processor will hold the credit card information; staff will have access only to a portion of the cardholder’s information. Tenants will be required to sign an authorization form allowing their credit card to be charged.

COMMISSIONER NEWMAN MOVED FOR THE ADOPTION OF RESOLUTION 2015-7, A RESOLUTION ESTABLISHING PROTOCOLS FOR SECURITY CREDIT CARD INFORMATION FROM TENANTS TO ALLOW FOR AUTOMATIC PAYMENTS. COMMISSIONER DALE SECONDED.
Sebastian Elrite said he supports this decision, it is a good idea to automate. He asked the Board to consider a local payment processor, such as Eureka Payments.

ROLL CALL VOTE WAS TAKEN:
COMMISSIONER NEWMAN – AYE
COMMISSIONER DALE – AYE
COMMISSIONER MARKS – AYE
COMMISSIONER WILSON – AYE
COMMISSIONER HIGGINS – ABSENT.

MOTION CARRIED WITHOUT DISSENT.

C. CONSIDERATION OF ADOPTING RESOLUTION 2015-08 WHICH ESTABLISHES FINDINGS RELATIVE TO THE APPLICATION BY THE HUMBOLDT BAY NATIONAL WILDLIFE REFUGE FOR THE WHITE SLOUGH TIDAL WETLANDS RESTORATION PROJECT.

Deputy Director reported the Coastal Conservancy is the CEQA Lead Agency and there is a certified Mitigated Negative Declaration.

COMMISSIONER WILSON MOVED FOR THE ADOPTION OF RESOLUTION 2015-08 WHICH ESTABLISHES FINDINGS RELATIVE TO THE APPLICATION BY THE HUMBOLDT BAY NATIONAL WILDLIFE REFUGE FOR THE WHITE SLOUGH TIDAL WETLANDS RESTORATION PROJECT. COMMISSIONER NEWMAN SECONDED.

Kent Sawatzky said there should be an allowance for sea level rise and mitigation for contiguous landowners.

Kelly Reid said it looks like there is a gain of 26 acres of salt marsh and a loss of 24 acres of brackish marsh. What happens with the other two acres; a lot of money is being spent to create two acres of salt marsh. Deputy Director replied the two acres become brackish pond; the overarching goal is to create salt marsh habitat.

ROLL CALL VOTE WAS TAKEN:
COMMISSIONER NEWMAN – AYE
COMMISSIONER DALE – AYE
COMMISSIONER MARKS – AYE
COMMISSIONER WILSON – AYE
COMMISSIONER HIGGINS – ABSENT.

MOTION CARRIED WITHOUT DISSENT.

D. CONSIDERATION OF GRANTING PERMIT 15-03 TO THE HUMBOLDT BAY NATIONAL WILDLIFE REFUGE FOR THE WHITE SLOUGH TIDAL WETLANDS RESTORATION PROJECT.

COMMISSIONER DALE MOVED TO GRANT PERMIT 15-03 TO THE HUMBOLDT BAY NATIONAL WILDLIFE REFUGE FOR THE WHITE SLOUGH TIDAL WETLANDS RESTORATION PROJECT. COMMISSIONER NEWMAN SECONDED. MOTION CARRIED WITHOUT DISSENT.
NEW BUSINESS:

A. CONSIDERATION OF EXCLUSIVE RIGHT TO NEGOTIATE WITH SAMOA PELLETS LLC FOR REDWOOD TERMINAL 2.

Executive Director reported Samoa Wood Pellets LLC’s project at Redwood Terminal 2 is the exporting of 250 tons/year of wood pellets. It would mean an investment of $35 million and create 25-28 jobs. The lease area of Redwood Terminal 2 would be the machine shop (31,000 sf), warehouse (92,000 sf) and the dock (7,000 sf). The 90 days Exclusive Right to Negotiate (ERTN) has two 90-day extensions for a cost of $5,000 for the initial ERTN and $2,500 for each of the extensions.

Steve Mueller, President of International WoodFuels LLC was the former owner of DG Fairhaven Power and is familiar with the area. He said they are more interested in a 30-year site lease than an ERTN. Shipments will begin in 2018 and they cannot wait another year to start building their facility. If they can get a lease and start building before the end of the year, they will be able to seal a 10-year contract with Japan. He said 8-10 ships per year are expected. Redwood Terminal 2 is where the right confluence of site, harbor, fiber/product and market exists. There will be almost zero emissions and all environmental requirements will be met.

COMMISSIONER WILSON MOVED TO APPROVE THE EXCLUSIVE RIGHT TO NEGOTIATE WITH SAMOA PELLETS LLC FOR REDWOOD TERMINAL 2. COMMISSIONER DALE SECONDED.

President Marks said as a previous worker managed by poor stewards of the environment, zero emissions is exciting.

Commissioner Wilson said HS has received funding for forest management with fuel reduction and he urged Mr. Mueller to contact them. Commissioner Wilson also encouraged him to use local engineers and workers. Mr. Mueller said they always use the local workforce when possible. He said they hope to be back in a month with a signed lease.

Kent Sawatzky thanked Mr. Mueller and Mr. Leary for considering this area for their facility. He said there is very little to object to with this type of project.

Susan Penn said this type of lease would go a long way to get the Harbor District out of the red.

A representative from ILWU14 said he supported the project; Humboldt County needs the work.

MOTION CARRIED WITHOUT DISSENT.

B. CONSIDERATION OF COAST SEAFOODS COMPANY LEASE FOR REDWOOD TERMINAL 2 WAREHOUSE.

Commissioner Dale recused himself and left the meeting room.

Executive Director reported Coast Seafoods Company’s project is for oyster seed sitting and production and would use the warehouse SE, rail pit and S access of Redwood Terminal 2. The lease calls for four 5-year options for $3,500/mo plus CPI and includes a dock easement. The lease would start July 1, 2015 and is subject to the approval of the subtidal leases.

President Marks asked if all the tenants can work together in the same area. Executive Director replied that Samoa Wood Pellets LLC is willing to work with Coast Seafoods Company and Taylor Mariculture and he does not expect any overlap.
COMMISSIONER WILSON MOVED TO APPROVE THE COAST SEAFOODS COMPANY LEASE FOR REDWOOD TERMINAL 2. COMMISSIONER NEWMAN SECONDED.

Kent Sawatzky said it might be good for the Harbor District to be held harmless if the tenants go "Hatfields and McCoys". More tenants are good for the District. He said the District's Karma is good right now.

Sebastian Elrite said he spoke with Mitch White of Taylor Mariculture, who said the expansion of Coast Seafoods Company's operation will hopefully offload to smaller businesses.

Rebecca Garwood, CA Dept. of Fish & Wildlife said if this project is subject to the mariculture pre-permitting process, make sure to include such in the Environmental Impact Report.

MOTION CARRIED WITHOUT DISSENT.

Commissioner Dale returned to the meeting room.

C. CONSIDERATION OF APPOINTING TWO COMMISSIONERS TO SERVE ON A 2X2 WORKING GROUP WITH TWO EUREKA CITY COUNCIL MEMBERS.

Executive Director reported this working group was designed to improve communication between the District and the City of Eureka.

Commissioner Newman said he would like to be on the committee since part of Eureka is in his district and there are a lot of waterfront/fishing considerations.

Commissioner Dale suggested the continuance of the division between the Fisherman's Marketing Association and the District be stopped.

Commissioner Wilson said while he would like to serve on the committee, President Marks' district also contains a part of Eureka; therefore he would be the more sensible committee member. He did caution the committee members about crossover discussions that would pertain to other committees they might serve on. For example, the first topic of discussion will most likely be the zoning change for Woodley Island and there are a couple of different committees that considers that issue.

Kent Sawatzky said it is important for Commissioner Newman to try to mend the fences with the fishermen and the City of Eureka and the Harbor District. And he supported President Marks as a committee member. Mr. Sawatzky said there is a good chance of good things coming from this committee.

Susan Penn said she supported President Marks' participation.

Kelly Reid suggested inviting the County and making it a 2x2x2 committee.

President Marks said he appoints Commissioner Newman and himself, with Commissioner Wilson as alternate, to the 2x2 Working Group.

D. RIGHT TO FISH ORDINANCE – DISCUSSION

Commissioner Wilson said the purpose of such an ordinance is to conserve politics and encourage the development of commercial fishing; reduce potential interference from non-commercial fishing activities; develop procedures for complaints, investigation and resolution and resolve conflict through mediation before legal action is taken. This ordinance would apply to all Harbor District properties and will be included in all future leases where it may pertain. He also said the marina zoning will remain the same; only the zoning of the District's upland property of Woodley Island is likely to change.
President Marks said this ordinance shows the District’s commitment to commercial fishermen.

Commissioner Newman thanked Commissioner Wilson for his work and said it will clear up the angst of the fishermen and provide them reassurance of the District’s commitment.

Executive Director suggesting adding an additional step that a complaint would go to the Board after the Executive Director and prior to mediation.

Kent Sawatzky said he strongly applauded this idea and said it is a perfect topic for the 2.2 Working Group. He suggested this ordinance be part of the zoning ordinance so as to not be repealed by a future Board of Commissioners.

Susan Penn said since the Executive Director may change from time to time, maybe there should be a different person to hear a complaint. District Counsel responded it would be the Executive Director of designee.

President Marks asked for this ordinance to be an agenda item for the June 11, 2015 Board meeting.

E. CONSIDERATION OF ADOPTION OF RESOLUTION 2015-09, A RESOLUTION GRANTING EASEMENT TO PACIFIC GAS AND ELECTRIC COMPANY FOR FUTURE GAS SERVICE AT REDWOOD TERMINAL 2.

Executive Director reported this easement would complete the process to get gas service to the east end of Redwood Terminal 2 and will be used by Taylor Mariculture and Samoa Wood Pellets LLC.

COMMISSIONER NEWMAN MOVED FOR THE ADOPTION OF RESOLUTION 2015-09, A RESOLUTION GRANTING EASEMENT TO PACIFIC GAS AND ELECTRIC COMPANY FOR FUTURE GAS SERVICE AT REDWOOD TERMINAL 2. COMMISSIONER DALE SECONDED

ROLL CALL VOTE WAS TAKEN:
COMMISSIONER NEWMAN – AYE
COMMISSIONER DALE – AYE
COMMISSIONER MARKS – AYE
COMMISSIONER WILSON – AYE
COMMISSIONER HIGGINS – ABSENT.

MOTION CARRIED WITHOUT DISSENT.

ADMINISTRATIVE AND EMERGENCY PERMITS: None.

The Regular Meeting of the Board of Commissioners adjourned at 8:25 p.m.

APPROVED BY: ___________________________  RECORDED BY: ___________________________

Greg Dale  Patricia Tyson
Secretary  Director of Administrative Services
IN THE MATTER OF:
Samoa Pulp Mill
Samoa, Humboldt County, CA

Humboldt Bay Harbor District
Respondent

SETTLEMENT AGREEMENT FOR
RECOVERY OF PAST RESPONSE
COSTS

U.S. EPA Region IX
CERCLA Docket No. 09-2015-00

Proceeding Under Section (h)(1) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
ADMINISTRATIVE SETTLEMENT AGREEMENT FOR RESPONSE COSTS

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement for Response Costs ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Humboldt Bay Harbor District, a California public entity ("the District" or "Respondent"). This Settlement Agreement provides for the reimbursement of response costs that EPA has or will incur in response actions to address hazardous substances at the Samoa Pulp Mill Site ("Site"), in Samoa, Humboldt County, California. The District also is incurring its own response costs at the Site.

2. This Settlement Agreement is entered into under the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation Nos. 14-14-C and 14-14-D, and redelegated to the Superfund Branch Chiefs pursuant to Regional Delegations 1290.15 (September 29, 1997) and 1290.20 (September 29, 1997).

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of any factual or legal statement or determination contained in this Settlement Agreement. Respondent otherwise agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms. EPA and Respondent recognize that the payments to be made by Respondent pursuant to this Settlement Agreement are not the payment of any fine or penalty.

4. EPA incurred response costs at or in connection with the Site.

5. EPA believes that, pursuant to Section 107(a)(1) of CERCLA, Respondent, as the current owner of the Site, is a liable party for response costs at the Site and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site. The District acquired the Site for the express purpose of facilitating a response to the hazardous substances at the Site for the protection of the Humboldt Bay environment and public health and welfare. There are other entities that are not parties to this Settlement Agreement that also may be liable for response costs at the Site pursuant to Section 107(a) of CERCLA.

6. EPA and Respondent anticipate that the Response Costs at the Site that are the subject of this Settlement Agreement will be incurred in the course of responding generally to above-ground and containerized hazardous substances, as generally described in the REQUEST FOR A CONTINUATION OF AN EMERGENCY RESPONSE REMOVAL ACTIONS AT THE SAMOA PULP MILL...
SITE LOCATED IN SAMOA, HUMBOLDT COUNTY, CA, dated November 4, 2013, included with this Settlement Agreement as Attachment A, and any amendments thereto. These hazardous substances may include pulping liquors and other caustic liquids, acidic liquids, sludges and laboratory wastes.

7. In concert with EPA, the District has expended its own staff and resources toward response activities at the Site. The District issued a limited obligation note in an amount not to exceed $1.25 million to obtain an advance on funds to pay toward these response activities. Consistent with the District’s charter, the District anticipates incurring additional debt secured by the real property that is the Site for the further removal of the former pulp mill operations and economic redevelopment of the Site.

II. PARTIES BOUND

8. This Settlement Agreement applies to and is binding on EPA and on Respondent and its successors and assigns. Any change in ownership or status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this Settlement Agreement.

9. Each signatory to this Settlement Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the party represented by him or her to this Settlement Agreement.

III. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or any document incorporated hereunder, the following definitions shall apply:


b. “Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business on the next working day.

c. “Effective Date” shall be the effective date of this Settlement Agreement as provided in Section XV.

d. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

e. “Net Proceeds” shall mean proceeds that the Respondent receives in
consideration of any sale of all or a portion of the real property that is the Site, after deduction for payment of all encumbrances and costs incurred in the sale, including but not limited to commissions, appraisal fees, escrow fees, title insurance and recordation and document fees.

f. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the Interest accrues. The rate of interest is subject to change on October 1 of each year.

g. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

h. “Parties” shall mean EPA and Respondent.

i. “RCRA” shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq.

j. “Respondent” or “District” shall mean Humboldt Bay Harbor District.

k. “Response Costs” shall mean costs, including, but not limited to, direct and indirect costs, that the EPA pays or has paid to address above ground or containerized hazardous substances at or in connection with the Site, consistent with the response described in Attachment A and any amendments thereto.

l. “Settlement Agreement” shall mean this Administrative Settlement Agreement for Response Costs, and any documents incorporated by reference into it. In the event of conflict between this Settlement Agreement and any incorporated documents, this Settlement Agreement shall control.

m. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

n. “Site” shall mean the Samoa Pulp Mill Site, encompassing approximately 70 acres, located on the shoreline of Humboldt Bay in Samoa, California.

o. “State” shall mean the State of California.

p. “Waste Material” shall mean (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any solid waste under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

IV. PAYMENT OF RESPONSE COSTS

11. On October 22, 2014, Respondent provided to EPA documentation to analyze
Respondent’s ability to reimburse Response Costs according to EPA’s financial model, “MUNIPay.” Based on the information Respondent provided, EPA’s analysis concluded that Respondent’s ability to reimburse EPA’s Response Costs is based on the value of salvage material at the Site and the value of the real property that comprises the Site. To establish the maximum value of Response Costs to be paid from these sources, EPA will send Respondent a bill that includes an itemized cost summary (SCORPIOS Report). Except as otherwise provided in Paragraph 16 of this Settlement Agreement, Respondent shall make payments within ninety (90) days of receipt of any bill. All payments of Response Costs pursuant to this Settlement Agreement, including any Interest owing pursuant to Paragraph 13, shall be made by electronic funds transfer as directed below, and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name (“Samoa Pulp Mill”), the EPA Region (IX) and Site/Spill ID Number #A949.

Payment by Wire Transfer shall be directed as follows:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Fedwire Message = “D 68010727 Environmental Protection Agency”

12. At the time of any payment, Respondent shall send notice that payment has been made to:

    David Wood
    Superfund Accounting (PMD 6)
    U.S. Environmental Protection Agency
    75 Hawthorne Street
    San Francisco, CA 94105

    And to:

    Tana Alert
    Superfund Division
    U.S. Environmental Protection Agency
    75 Hawthorne Street
    San Francisco, CA 94105

    And by e-mail to:

    acctsreceivable.cinwd@epa.gov,
    EPA Cincinnati Finance Office
    26 Martin Luther King Drive
    Cincinnati, Ohio 45268
Such notices shall reference the EPA Site ID #A949 and the EPA docket number for this action.

13. Interest. In the event that any payment for Response Costs is not made within ninety (90) days after receipt of a bill sent pursuant to Paragraph 11, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin forty-five (45) days after receipt of a bill sent pursuant to Paragraph 11, and shall continue to accrue, without regard to any extension of the payment date pursuant to Paragraph 16, until the date of payment of the costs. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent’s failure to make timely payments under this Section, including but not limited to payment of stipulated penalties pursuant to Section V. Respondent shall direct and provide notice for all payments of Interest in accordance with Paragraph 12, above.

14. Respondent may contest payment of any Response Costs billed under Paragraph 11 if Respondent determines that EPA has made a mathematical error, or if it believes that EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within ninety (90) days of receipt of the bill, and must be sent to EPA as provided in Paragraph 12. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 90-day period pay all uncontested Response Costs that are due to EPA in the manner described in Paragraph 11. If contested Response Costs are due in accordance with Paragraphs 11 or 16, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the state of California and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with any objection to Response Costs, Respondent shall initiate the Dispute Resolution procedures in Section XIV (Dispute Resolution). If EPA prevails in the dispute, within thirty (30) days of the resolution of the dispute or when the Response Costs are due in accordance with Paragraph 11 and 16 (whichever is later in time), Respondent shall pay the sums due, with accrued Interest, to EPA in the manner described in Paragraph 11. If Respondent prevails concerning any aspect of the contested costs, Respondent only shall pay that portion of the costs, plus associated accrued Interest, for which it did not prevail. Respondent shall be disbursed any balance of any escrow account after it pays the costs, plus associated Interest, for which EPA prevailed. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent’s obligation to reimburse EPA for its Response Costs.

15. The total amount of funds paid by Respondent pursuant to Paragraph 11 shall be deposited by EPA in the Samoa Pulp Mill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.
16. **Payment Period Pending Salvage or Sale of Real Property.** The Parties anticipate that the District will obtain funds to reimburse all or a portion of EPA’s Response Costs subsequent to the salvage of fixtures and improvements at the Site, particularly the Kraft mill boiler, or from the potential sale of the Site. If EPA bills Respondent pursuant to Paragraph 11 and Respondent has not yet obtained sufficient funds from salvage actions, sale of the Site or otherwise to reimburse EPA’s Response Costs invoice in full, Respondent shall provide notice advising EPA of that fact in the manner for notice stated in Paragraph 12. In such event, the date that payment is due shall be thirty (30) days after Respondent receives Net Proceeds from any salvage of fixtures or improvements at the Site or Net Proceeds from sale of any real property within the Site, subject to the first application, up to $1.25 million, of such funds toward the limited obligation note referenced in Paragraph 7. Respondent agrees not to encumber the real property within the Site beyond the obligation for the limited obligation note, redevelopment indentures anticipated for the Site or other encumbrances necessary for the maintenance of the Site without first obtaining written approval from EPA. Nothing in this Agreement shall be construed to require the Respondent to sell any real property within the Site. The obligation to reimburse the EPA from the net proceeds of a sale of any real property within the Site shall not apply to real property within the Site that is sold at least seven (7) years after the date of this Agreement. Nothing in this Paragraph or Paragraph 17 shall be construed to preclude the District, in its sole discretion, from reimbursing EPA from any sources of funding not specified in this Paragraph.

17. Any further modification of the payments obligations of this Settlement Agreement shall be by mutual agreement of the Parties, shall be in writing, and shall be effective when signed by EPA.

V. **FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

18. **Stipulated Penalty.**

   a. If any amounts due pursuant to this Settlement Agreement are not paid by the required date, Respondent shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13, $500.00 per day that such payment is late.

   b. Stipulated penalties are due and payable within thirty (30) days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by electronic funds transfer as directed in Paragraph 11.

   c. At the time of each payment, Respondent also shall send notice that payment has been made to EPA in accordance with Paragraph 12. Such notice shall identify the EPA Site ID #A949 and the EPA Docket Number for this action.

   d. Penalties shall accrue as provided in this Paragraph regardless of whether
EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

19. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Respondent’s failure to comply with the requirements of this Settlement Agreement, if Respondent fails or refuses to comply with the requirements of this Settlement Agreement it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, prevails in an action to enforce this Settlement Agreement, Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Respondent from any other obligation required by this Settlement Agreement.

VI. COVENANT NOT TO SUE BY EPA

21. Except as specifically provided in Section VII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs paid under Section IV of this Settlement Agreement. This covenant shall take effect on receipt by EPA of all amounts required by Section IV (Payment of Response Costs) and any amounts due under Section V (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned on the satisfactory performance by Respondent of its obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other person.

VII. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Section VI. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Respondent with respect to:

a. liability for failure of Respondent to meet a requirement of this Settlement Agreement;

b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments..

23. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

VIII. COVENANT NOT TO SUEx BY RESPONDENT

24. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Response Costs addressed in this Settlement Agreement, including, but not limited to:

   a. any direct or indirect claim for reimbursement of the Response Costs from the Hazardous Substance Superfund established by 26 U.S.C. §9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

   b. any claim arising out of the response actions for which the Response Costs were incurred, including any claim under the United States Constitution, any state constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

   c. any claim against EPA pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the response actions at the Site for which Response Costs were incurred or Response Costs.

25. Except as expressly provided in Paragraph 27, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 22 (b), (c), or (e), but only to the extent that Respondent’s claims relate to the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

26. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

27. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person’s liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous
substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

28. The waiver in Paragraph 27 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the criteria in Paragraph 27 if such person asserts a claim or cause of action relating to the Site against Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting such criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Except as provided in Paragraph 27, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement. Except as otherwise provided in Section VIII (Covenant Not to Sue by Respondent), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

30. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Response Costs addressed in IV.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Response Costs.

31. Respondent agrees that with respect to any suit or claim for contribution brought by
it for matters related to this Settlement Agreement, it will notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within ten (10) days of service of the complaint or claim. In addition, Respondent shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial related to this Settlement Agreement.

32. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised in the subsequent proceeding were or should have been resolved through this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VI.

X. ACCESS TO INFORMATION

33. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

34. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. Respondent shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Respondent’s favor. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

35. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.
XI. RECORD RETENTION

36. Until ten (10) years after the Effective Date, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the condition of the Site or the liability of any person under CERCLA with respect to the Site, regardless of any retention policy to the contrary. Respondent also shall instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description consistent with this Paragraph.

37. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such records or documents, and, on request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Respondent shall retain all records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Respondent’s favor. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

38. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. NOTICES AND SUBMISSIONS

39. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise directed, written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Respondent.

As to EPA:

Tana Alert
EPA, Region IX
75 Hawthorne Street  
San Francisco, California 94105

As to Respondent:

Jack Crider  
Chief Executive Officer  
Humboldt Bay Harbor, Recreation and Conservation District  
P.O. Box 1030  
601 Startare Drive  
Eureka, CA 95502-1030

XIII. INTEGRATION

40. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XIV. DISPUTE RESOLUTION

41. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

42. If Respondent objects to any billings for Response Costs made pursuant to this Settlement Agreement, it shall notify EPA in writing of its objection(s) in accordance with Paragraph 14, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty (30) days from EPA’s receipt of Respondent’s written objection(s) to resolve the dispute through formal negotiations (the “Negotiation Period”). The Negotiation Period may be extended at the sole discretion of EPA.

43. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA’s decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent’s obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA’s decision, whichever occurs.

XV. EFFECTIVE DATE
44. This Settlement Agreement shall be effective five (5) days after the Settlement Agreement is signed by the Assistant Director.

**XVI. PUBLIC COMMENT**

45. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

**XVII. ATTORNEY GENERAL APPROVAL**

46. The Attorney General or his or her designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

It is so SETTLED AND AGREED this __________ day of __________, 2015.

For Respondent __________________________

By: ________________________________

Title: ________________________________

For EPA:

By: ________________________________ Date: __________

Daniel A. Meer
Assistant Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
Redwood Electrical Services
PO Box 6097
Eureka, CA 95502

Phone # 7074441374  12kvsparky@suddenlink.net
Fax # 7074442004

Name / Address
Humboldt Bay Harbor District

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<th>Rate</th>
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<td>Redwood Electrical is pleased to summit a labor and materials quote to rework existing power line and extend line to a new pole mounted transformer to provide 100 Amp at 480/277 volt to the Redwood marine Terminal Berth 1 - building 3</td>
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We look forward to working with you.

Total $19,999.00