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

DATE: October 23, 2014
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 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 Sections 54956.8 (Conference with Real Property Negotiators).

      1. Conference with Real Property Negotiator
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation:
         Timber Heritage Association purchase of Redwood Marine Terminal Berth 1 Roundhouse Real Property

      2. Conference with Real Property Negotiator
         Agency Negotiator: Board President, Executive Director and District Counsel
         Under Negotiation:
         Sale of Boiler at Redwood Terminal 2 Property

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:
   Note: All matters listed under the Consent Calendar are considered to be routine by the Board of Commissioners and will be enacted by one motion. There will be no separate discussion of these items. If discussion is required, that item will be removed from the Consent Calendar and considered separately.

   a. Consideration of approval of minutes from the April 25, 2014 Special Board Meeting.
   b. Consideration of approval of minutes from the April 29, 2014 Special Board Meeting.
   c. Consideration of approval of minutes from the May 8, 2014 Board Meeting.
Agenda for October 23, 2014 Regular Board Meeting

8. Communications and Reports
   a. Executive Directors Report
      • Terminal 2 clean up
      • Pre-permitting proposals
      • California Shellfish Initiative Working Group
   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
    a. Consideration of adopting Resolution 2014-13 which establishes findings relative to the application by MLRX2, LLC for the MLRX2 Stormwater Improvement and Tide Gate Project.
    b. Consideration of granting Permit 14-06 to MLRX2, LLC for the MLRX2 Stormwater Improvement and Tide Gate Project.

11. New Business
    a. Consideration of approval of Employment Agreement with Executive Director Jack Crider.
    b. Consideration of approval of contract with SHN Engineers and Geologists for services related to Pre-Dredge Survey Services for 13 Humboldt Bay Facilities.
    c. Consideration of approval of contract with Eugene Cowan for services related to providing tax and legal advice with respect to the development of the Humboldt Bay Eco-Industrial Park facilities.
    d. Consideration of approval of contract with Utility Cost Management, LLC for the CSDA Utility Bill Project.
    e. Consideration of approval of contract with Sustainable World Solutions, LLC to hold a Global Music and Natural Food Festival.

12. Administrative and Emergency Permits

13. Adjournment
MINUTES (Subject to Approval)
SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT
April 25, 2014

PRESENT:
Commissioner Newman
Commissioner Marks
Commissioner Higgins

ABSENT:
Commissioner Dale
Commissioner Wilson

President Marks called the Special Meeting to order at 12:06 p.m.

NEW BUSINESS

A. FY 2014/15 BUDGET WORKSHOP

CEO and Director of Administrative Services presented revenue-enhancing ideas and the projects for the Board to consider during this workshop.

Some of the revenue-enhancing proposals: Woodley Island – flupsy leases, cold storage revenue and expanded storage area; Redwood Marine Terminal Berth 1 – dockage/crab pot storage and forklift fees, building lease, fuel dock; Redwood Terminal Berth 2 – boiler sale, surplus equipment sale, Energystyces/Taylor/DG Power/ New Leases; Fields Landing Boat Yard – T-Mobile/Zerlang leases; King Salmon – new tideland leases for commercial users; Tideland Leases – new aquaculture leases.

New Operating and Capital Improvement Expenses: Administration – website development and computer upgrades; Woodley Island – 2 new Maintenance employees, marina float replacement, tenant restrooms upgrades, gangway gates, wildlife area trails, expansion of storage area, and cold storage; Redwood Marine Terminal Berth 1 – dock hoist/crane, decking, forklift, power and lights, fuel dock and fencing; Redwood Terminal Berth 2 – purchase Freshwater Parcels B, C and 4, new electrical and substation repair, new domestic water, industrial water/fire protection, sewer/leach field improvements, building improvements/roof repairs, road improvements, flupsy marina, outfall pipe repairs and environmental clean-up; Fields Landing Boat Yard – installation of lower dock, expand yard – fencing/rock, improve SeaScouts building for dredge storage, increased lighting/security cameras, and backhoe purchase; King Salmon – dredging costs, sea wall repair and Port Authority dock; Shelter Cove – freezer, solid waste separator and sewer collector.

The Board thanked staff for the innovative ideas presented and said the budget was presented in a positive fashion.

The Special Meeting of the Board of Commissioners adjourned at 1:25 p.m.

APPROVED BY:                  RECORDED BY:

Patrick Higgins, Vice President  Patricia Tyson
For  Director of Administrative Services
Greg Dale, Secretary
MINUTES (Subject to Approval)
SPECIAL MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOUR, RECREATION AND CONSERVATION DISTRICT

April 29, 2014

PRESENT:

Commissioner Newman
Commissioner Marks
Commissioner Wilson
Commissioner Higgins

ABSENT:

Commissioner Dale

President Marks called the Special Meeting to order at 12:02 p.m.

Commissioner Wilson led those present in the Pledge of Allegiance.

District Counsel reported on the Executive Closed Session as follows: Status of negotiations with the Harbor District Labor Negotiator: no action taken; Status on Conference with Real Property Negotiator Freshwater Pulp Mill boiler sale and EPA provisions and remediation costs: no action taken.

PUBLIC COMMENT: None

NEW BUSINESS

A. CONSIDERATION OF ADOPTION OF RESOLUTION 2014-05, A RESOLUTION APPROVING SALE OF LIMITED OBLIGATION NOTE PURSUANT TO HARBOR AND NAVIGATIONS CODE SECTION 6084.2 TO COAST SEAFOODS INC.

CEO reported he and District Counsel have been working with Coast Seafoods' legal counsel to write the documents within the bounds of the District's Enabling Legislation. There will be two documents: the Limited Obligation Note and the Secured Lease Security Agreement.

CEO said the District has offered to assist Coast Seafoods with their future permitting, which is something the District does for all leasees/permittees. The District would not be giving Coast Seafoods any preferential treatment as a result of the loan.

CEO also stated that real property cannot be offered as collateral, only future revenues. If the sources that are identified within the documents do not generate enough revenue to pay the loan payment, then other District revenue sources can be accessed.

District Counsel said if the Board authorizes the Limited Obligation Note through the adoption of the resolution, they will be authorizing the signing of additional loan documents.

COMMISSIONER HIGGINS MOVED FOR THE ADOPTION OF RESOLUTION 2014-05, A RESOLUTION APPROVING SALE OF LIMITED OBLIGATION NOTE PURSUANT TO HARBOR AND NAVIGATIONS CODE SECTION 6084.2 TO COAST SEAFOODS INC. WITH THE AMENDMENT MADE TO PARAGRAPH #6 TO REFLECT THE WORDING FROM THE LIMITED OBLIGATION NOTE. COMMISSIONER NEWMAN SECONDED.

District Counsel stated USEPA will be looking for security on the same items that are being pledged in the Note. Commissioner Wilson said the USEPA will not generate income by liening District property; they will go after assets not encumbered.

CEO said he was led to believe the District's line of credit from Coast Seafoods to pay for the transport of the liquors was the extent of the District's obligation.
ROLL CALL VOTE WAS TAKEN:

COMMISSIONER NEWMAN – AYE
COMMISSIONER DALE – ABSENT
COMMISSIONER MARKS – AYE
COMMISSIONER WILSON – AYE
COMMISSIONER HIGGINS – AYE

MOTION CARRIED WITHOUT DISSENT.

The Special Meeting of the Board of Commissioners adjourned AT 12:29 p.m.

APPROVED BY:                         RECORDED BY:

Patrick Higgins, Vice President       Patricia Tyson
For                                  Director of Administrative Services
Greg Dale, Secretary

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PRESENT:

Commissioner Newman
Commissioner Dale
Commissioner Marks
Commissioner Wilson
Commissioner Higgins

President Marks called the Executive Closed Session to order at 6:05 p.m.

President Marks adjourned the Executive Closed Session at 6:55 p.m.

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

President Marks led those present in the Pledge of Allegiance.

District Counsel reported on the Executive Closed Session as follows: Status of negotiations with the Harbor District Labor Negotiator: no action taken; Status on Conference with Real Property Negotiator Freshwater Pulp Mill boiler sale and EPA provisions and remediation costs: no action taken.

PUBLIC COMMENT:

Kent Sawatzky stated he has a correspondence from the Harbor District to Mike Wheeler, County of Humboldt, regarding the General Plan amendment for sewer treatment on the Samoa Project. He is concerned about the low-income housing aspect using coastal land. He said he supports having moderate-income housing on the peninsula to support the workforce needed there, but the coastal-dependent industrial property should not be used for low-income housing.

CONSENT CALENDAR:

COMMISSIONER HIGGINS MOTIONED FOR THE APPROVAL OF MINUTES FROM THE NOVEMBER 14, 2013 BOARD MEETING. COMMISSIONER NEWMAN SECONDED. MOTION CARRIED WITHOUT DISSENT.

CEO REPORT:

CEO reported the Redwood Terminal 2 cleanup is going well.

- The 200-truck contract for the pulp liquor transporting is complete and the 500 truck contract with MP Environmental Services is signed. The first empty tank has been cut down.
- Recology is exercising their jurisdiction on non-hazardous material regarding the EPA's RFP for 1,000 tons.
- The Regional Water Board NPDES has been terminated and they are requesting more testing of the demolition piles and dioxin.
- The EPA Director of the Superfund Division and the Chief of Emergency Management visited the site and the Congressman Huffman has requested additional funding.
- The ERTN for Energistycs Inc. has been signed and the deposit received for the Wood Pellet Mill Project.
- CEO reported he made a trip to Nehalem Dredging to document the dredge equipment and organize the loading and hauling.
- There is currently a RFP for a Forklift for Redwood Terminal 2, a RFP for Trucking Services to transport dredge equipment, and a RFP for Financial Services for the Bond and New Market Tax Credits, all of which will be under Board consideration May 22, 2014.
- There are also Dredge Disposal Permits, which will go out next week.

Commissioner Higgins asked if things were fairly organized at Redwood Terminal 2. CEO responded yes, very organized.
STAFF REPORTS:

Director of Conservation:

- Reported the scope of work for the dredge material disposal is being finalized and a RFP for permitting the site will be distributed soon.
- Sent a letter to Caltrans requesting them to clean up two billboards that had fallen in the marsh along HWY 101.
- Had a meeting with the California Department of Public Health to talk about the Pre-permitting project. Had a discussion today about coming up with mitigation options for Caltrans to restore and create salt marsh habitats.

Director of Facility Maintenance:

- Reported that CEO had put him on a task to lower water and sewage bills. A new meter was installed and now the Harbor District will be paying for the discharge only and he hopes to lower the bill by 2/3.
- Maintenance crew went down to Shelter Cove for the annual cleaning and servicing of the discharge pipe. There has been concern about buildup of sand in the parking lot, but after checking it out crew found no buildup or need for debris removal. A full cable replacement on the discharge pipe is necessary because the anchor pin is worn away. Crew is going back next week to replace approximately 270 ft of cable. Commissioner Higgins asked if they will have to re-drill holes. Director of Facilities Maintenance said that is a possibility.
- He thanked Commissioner Dale and his crew who helped with the F Dock replacement project.

District Counsel:

- Reported he has been spending a lot of time on the Coast Seafoods Loan Agreement.

District Planner:

- Said the Water Trails environmental document is ready to go. He has a letter out to City of Arcata and Humboldt County asking to allow for a consolidated coastal permit process.
- Was asked to write a comment letter responding to the County referral on the Samoa Town Master Plan. It is a timing issue. The multi-family project which is a very small portion, will be located away from the industrial area, and had already been approved. Land uses were approved several years ago. Commissioner Higgins asked if the comments were about Danco and their property and not about the Harbor District property. District Planner said yes. Commissioner Wilson said it is regarding a ½ acre of conversion of coastal and industrial property for the waste-water treatment part, but that it actually services the coastal dependent portion rather than the industrial land. It is not changing the use and it is only enhancing the ability of the coastal dependent industrial property. They will address it more directly at the next meeting. District Planner said he would be happy to help with that.
- He reported that they wrapped up the Tiger Grant application and thanked Director of Administrative Services for "pushing the button."
- There was a cultural resources determination for the marina building at Shelter Cove potentially requiring cultural resources investigation. He was asked to reach out to a cultural resources specialist. He met with Jamie Roscoe and they came up with a strategy to do some auguring in from the edges to do a characterization at a much lower cost and to assist the applicant to distribute a request for bids for the work.

District Treasurer:

- Reported that he has met with staff to schedule timeframes for completion of monthly financials. Commissioner Marks asked if everything looked good. Treasurer said yes, there is a lot going on.
COMMISSIONERS REPORTS

Commissioner Higgins:

- Participated in the Budget Committee Meeting on Monday.

Commissioner Wilson:

- Attended the EPA tour of the Redwood Terminal 2 property on Tuesday with Commissioner Marks. He said both he and Commissioner Marks were concerned by the extent of contamination, but were jazzed about the forward movement of the site.
- Attended the reception for the Fisheries Joint SubCommittee in Sacramento. He invited the Fisheries Joint SubCommittee Chair, Bonnie Lowenthal, to visit Humboldt Bay.
- Attended a multi-agency meeting of the Working Waterfronts Opportunities Collaboration Committee.

Commissioner Marks:

- Also attended the EPA tour.
- Went to Fields Landing to look at a sunken boat and worked with others to figure out a resolution.

Commissioner Dale:

- Went to the Joint SubCommittee meeting on Fisheries and Aquaculture. He really appreciates that Humboldt County was represented so well.

Commissioner Newman:

- He attended the Joint SubCommittee Meeting in Sacramento.

OTHER

PRESENTATION BY HUMBOLDT STATE UNIVERSITY SENIOR PRACTICUM STUDENTS ON SEA LEVEL RISE

Yvonne Everett’s, HSU Department of Environmental Science and Management students: Jim Finn, Sydney Stuart, and Denise Chong made a presentation on how sea level rise might affect Humboldt Bay.

Commissioner Dale said that he met with the students several times and thinks the Sea Level Rise Program is of great value.

Commissioner Higgins said they were very detailed and their diction was excellent.

Commissioner Wilson asked if there was any opportunity for expanded aquaculture. Mr. Finn said there is a lot of opportunity for expanded mariculture and aquaponics. Ms. Chong said the Brownfields would be less of a threat if they are monitored and then in turn could be used as sites for aquaponics.

Kent Sawatzky asked what benchmark they used to base their research upon and asked what kind of an impact a natural disaster could have on the rest of the Bay if those areas were to wash out into the Bay. Mr. Finn said it was not quantified in time and that there are many things that could happen, but possible future natural disasters should not limit planning efforts for the future of the bay.

Lonnie Hollenbeck said the Pine Island Glacier has grown in speed by 74% in the last 10 years. He is impressed that the Board brought in the HSU students and every available resource to gather information.
PRESENTATION BY ANDREW CIOCCA, STERN BROTHERS – BOND REFINANCING

Mr. Ciocca, Stern Brothers, said his father handled the Harbor Districts' bond refunding in 2004. He has over $10 billion in California municipal debt experience and has local experience serving the City of Eureka in 2010 and Humboldt Bay Harbor, Recreation and Conservation District in 2004. Mr. Ciocca introduced attorney Cameron Weiss, who deals mainly with tax exempt matters. Mr. Weiss helped the Port of Santa Cruz with refinancing and ultimately saved them enough money to purchase a dredge. He has 24 years of experience in California public finance law as well as local experience serving Del Norte County and Humboldt County.

Mr. Ciocca said that compared to traditional underwritings, private placements are competitively priced, faster, cheaper, and require less continuing disclosure. Private placements are usually purchased by one investor or bank. There are no underwriter fees, lower legal and document fees, and often there are no rating agency fees. There is a shorter marketing term, less legal documentation, and often, rating agency presentations are not required. Private placement allows the District the opportunity to access +/- $217,000 in current reserves and reduce outstanding debt, to save +/- $215,000 over the life of the debt, to level outstanding debt service, and to eliminate onerous terms in current indentures. It also requires less staff time.

The proposed schedule is as follows: week 1, District meeting to review proposed refunding; week 2, kick-off conference call discussing financing strategy and discuss circulation of Request for Proposals to placement banks; week 3, call review circulation of Request for Proposals to placement banks and circulate RFP to placement banks; week 4, receive clarification questions regarding RFP from placement banks, review and discuss questions received, and issue responses to clarification requests; week 5, receive bids to RFP, call to discuss bids and choose placement bank, inform placement banks of award, and Trustee Issues call on bonds and loan; week 6, first round of document review; week 7, second round of document review and agreement with investor is submitted for District Board approval; week 8, final document review and documents are signed; week 10, close bond sale.

New Market Tax Credits, Federal Guarantees and Direct Loans, State Economic Development Loans, and Private Activity Bonds or Debt are available to the District for the proposed Private Activity Financing. The purpose of the New Market Tax Credits program is to encourage private investment in economically disadvantaged areas and communities. Stern Brothers has worked with multiple clients in the placement of New Market Tax Credits to complement traditional municipal debt. There are a broad range of Federal programs which should be investigated as both credit enhancement and as direct loans. An avenue of investigation into State Economic Development Loans would be the California Infrastructure and Economic Development Bank (CIEDB), which makes direct loans to job creating projects. Mr. Ciocca has structured four CIEDB loans for a broad range of uses including port facilities.

Commissioner Higgins said Mr. Ciocca caught his interest with the bond restructuring. He said it seems very complicated, but they did a great job with the presentation.

Commissioner Wilson recommended that a subcommittee be created to hear the pitches and to work with the CEO on refinancing and future financing. CEO said he and the Board are also building a relationship with bond counsel. Commissioner Marks asked CEO if the RFP would come out before the next meeting. CEO said yes, the responses would come in on May 21, 2014.

Commissioner Dale asked if the bond refinancing expense is paid up front. Mr. Weiss said they work on a fully contingent basis. They want to develop a relationship with their clients to continue business with them. Commissioner Dale asked if the cost would be greater than the savings, Mr. Weiss said the service is all factored in after the fact and there is no out of pocket expense.

District Treasurer said he thinks the bond refinancing is a great idea and there is a lot of information available for research.
Kent Sawatzky asked if the refinancing was long term, if there are prepayment penalties, and if the rate is locked in. Mr. Weiss said the bond buying program is tapering and will ultimately conclude sometime around November 2014, which will spur the fear of inflation. Prepayment penalties are negotiable.

Karen Brooks said she would like to see the pay-off done within a shorter timeline.

President Marks suggested creating a committee to review the bond refinancing and New Market Tax Credits. Commissioner Wilson said he would like to be on the committee as long as it is defined and the RFP is reviewed. CEO said the RFP is already out and will be reviewed. Commissioner Dale said he would also be on the committee.

NON-AGENDA: None

UNFINISHED BUSINESS

A. CONSIDERATION OF ADOPTION OF FY 2014/15 PRELIMINARY BUDGET.

Director of Administrative Services said the Board of Commissioners recently held a Budget Workshop. This is the consideration of the FY 2014/15 Preliminary Budget; and if it is adopted tonight with or without changes, then it goes to the public for a 30-day public comment period. It will then be reviewed again in a public hearing and first reading by the Board on the first meeting in June. The second meeting in June will be the second reading and adoption. The summary of the FY 2014/15 Preliminary Budget is as follows: total revenue is $6,862,597; the operating expenses are $2,259,024; the non-operating expenses (capital expenses, debt payment) are $4,400,048; the excess revenues over (under) expenses are $203,525; deduct single-use revenues (Woodley Island Marina Dredge Surcharge and Float Replacement) of $170,000; the total budget balance is $33,525. The revenue does include $2.4 million for Redwood Terminal 2, which includes the sale of the boiler and will also off-set the non-operating expenses. The annual tax revenue is the same as the last fiscal year because updated figures are not yet available. There are no proposed increases in slip rent, transient rentals, dredge surcharge, or float replacement fees for the marina. Borrowing and New Market Tax Credits are included at $1.3 million as well as the Brownfields Loan at $500,000. The salaries and wages were left at last fiscal years' dollar amount until the Union Contract is finalized. Included is the cost for two new Harbor Maintenance 1 employees. CEO explained that if the funding is not there, improvement projects will not begin.

COMMISSIONER HIGGINS MOTIONED FOR THE ADOPTION OF FY 2014/15 PRELIMINARY BUDGET. COMMISSIONER NEWMAN SECONDED.

Kent Sawatzky said between one half and one third of the projected income is accounted for as being received. He urged the Board to be conservative and said that a lack of accuracy can lead to questions. He asked if $700,000 was a down payment for parcels B, C & 4 or are they going to pay for it in cash. There will be time to go over it later as it is a preliminary budget and not a final.

Karen Brooks asked for more clarification on the difference between the projected numbers and the actual numbers. She said Fields Landing seems to have more revenue than projected. CEO stated that is due to new renters on the site. Ms. Brooks asked why there was nothing in the capitol columns. Director of Administrative Services said that was due to an oversight.

President Marks reminded the public that it was a preliminary budget and not final.

MOTION CARRIED WITHOUT DISSENT.
NEW BUSINESS

A. DISCUSSION OF DEDICATED OF KING SALMON FISHERMAN'S CHANNEL AND BEACH – LONNIE HOLLENBECK.

Lonnie Hollenbeck said he is a King Salmon resident on the King Salmon Improvement Committee and is proposing the Board consider dedications to former District CEO Jack Alderson and former District Commissioner Jimmy Smith.

Commissioner Newman said it was a great idea and asked how to move forward. President Marks said it would be on the next agenda.

Commissioner Wilson said he knows the history and out of respect for Mr. Alderson, this project needs to be well thought out.

Kent Sawatzky said he strongly supports the project. He spoke to Jack Alderson and said he is very interesting. He said it is very appropriate for a contribution to the community of King Salmon.

President Marks asked when the appropriate time would be. District Counsel said the appropriate time would be when we close with PG&E and have the title. The Harbor District will rename the bridge and issue a press release so the public uses the new name. Mr. Hollenbeck asked if the bridge can be renamed through Escrow. District Counsel said Escrow can only change the description, not the name.

President Marks said the Board will move forward when appropriate.

B. CONSIDERATION OF COAST SEAFOODS COMPANY NOTE LEASE SECURITY.

CEO said the Board of Commissioners has discussed this several times. The District’s commitments are to extend the tideland lease through 2055. Upon payment of the note, the lease reverts to five years and has an option for another five years. Coast Seafoods may apply their lease payments to the note balance in lieu of payment to the District if the District defaults. Upon the District receipt of a) grant funds for addressing the pulping liquors, or b.) proceeds from site improvements (boiler sale); the District shall immediately apply 90% of such revenues toward the Coast Seafoods Note.

District Counsel said the pay off period is 2 years. The 40-year pay-off is formal and an incentive to pay the note in full within 2 years.

COMMISSIONER WILSON MOTIONED FOR APPROVAL OF THE COAST SEAFOODS COMPANY NOTE LEASE SECURITY. COMMISSIONER HIGGINS SECONDED.

Commissioner Newman said 2055 is concerning, but he is comfortable with it.

Commissioner Higgins said the points have been resolved to his satisfaction.

District Counsel said the trucking contract would be held in limbo if the Coast Seafoods Company Note Lease Security does not get approved. The Harbor District must continue the transport of the liquors from the Pulp Mill.

Kent Sawatzky recommended finding out exactly how much the lease is. He said it is extremely irresponsible to make a decision without knowledge of the numbers.

Commissioner Higgins asked if the lease prices are fixed and known. CEO said yes.

Director of Conservation said this item is entirely separate from the Pre-permitting project. The Pre-permitting project and the Coast Seafoods lease do not interact at all.
Debbie Provolt said only the promissory note document was made public and asked if any of the other documents would be made public as well. CEO said all the documents are public and were in the last meeting’s packet. Mrs. Provolt asked if the lease payments would be going into restricted public trust accounts and if the funds are used to repay debt on the Pulp Mill will that transfer public trust rights to the Pulp Mill site. District Treasurer said the payments will be treated as tideland revenue just as if we had received the regular lease payments. Mrs. Provolt said the Harbor District is using the funds to pay off a loan that uses property as collateral on which a majority is not subject to public trust rights. Mrs. Provolt suggested to ask the question to the State Lands Commission. Even if it did subject a portion of the property to be subject to public trust, it would not be a bad thing as long as the funds were treated properly. She said the Harbor District Board should know the answer to her question.

Karen Brooks said it is absolutely critical to transport the liquors off of the property. She applauds Coast Seafoods for stepping up to the plate, but she thinks that lease extensions should be offered to other lessees. She said it does not seem fair. She said she is concerned with the $2.2 million for improvements on the property.

Commissioner Wilson said that 3.5% on an unsecured loan is very unusual. He said there is a risk in every decision, but he said the Board and staff has been doing their due diligence.

President Marks said that as long as he is on the Commission he will do his best to expedite the transportation of the liquors off of the site. He said they have explored this and discussed it many times.

MOTION CARRIED WITHOUT DISSENT.

C. CONSIDERATION OF ESTABLISHING SHELLFISH RAFT USE AT WOODLEY ISLAND MARINA.

Director of Administrative Services said staff has looked at the marina’s waiting list and have determined that the majority of people on the waiting list are waiting for smaller slips. Six slips are available for flupsy placement. This will provide the ability to increase marina occupancy and generate an additional $15,000 revenue per year and allow smaller shellfish producers to occupy space at a reasonable cost - $300 per month. The flupsies will be required to have CF numbers, be movable by an outboard motor, and they do have to obtain an operating permit from the District for $250/yr. Bodega Bay also offers this option. Director of Conservation said the flupsies would need proper screening on pumping intake, carrying capacity, and they would require that equipment is new or sanitized. CEO said he does not see it being any issue.

Commissioner Wilson asked what the staff was asking for. CEO said for direction to move forward and the next thing the Board will consider is a Negative Declaration at a future meeting.

COMMISSIONER HIGGINS MOVED FOR THE ESTABLISHMENT OF SHELLFISH RAFT USE AT WOODLEY ISLAND MARINA. COMMISSIONER WILSON SECONDED.

Todd VanHerpe, Humboldt Bay Oyster Company, said he would like to sign up to rent a slip for flupsies. It works in other places, why not here at Woodley Island Marina. He said if there is an ability to move the flupsies to good water, then that is a great opportunity. It will give him some seed security. Seed is not always available. Redwood Terminal Berth 2 would be the best location. Commissioner Higgins asked if Redwood Dock 1 would be a good location. Mr. VanHerpe said Redwood Dock 1 would also be a good location.

Sebastian Elrite, Aqua-Rodeo Farms, said he thinks the CF number and steering consol requirements can be accommodated. He said tying it in with standard marina practices with a Negative Declaration makes a lot of sense.

MOTION CARRIED WITHOUT DISSENT.
D. CONSIDERATION OF APPROVAL OF A LETTER TO HUMBOLDT WASTE MANAGEMENT AUTHORITY REQUESTING A WAIVER OF FEES.

COMMISSIONER NEWMAN MOTIONED FOR THE APPROVAL OF A LETTER TO HUMBOLDT WASTE MANAGEMENT AUTHORITY REQUESTING A WAIVER OF FEES. COMMISSIONER DALE SECONDED.

CEO said the standard HWMA fee is $25.38 per ton for solid waste leaving the County. The fee supports HWMA programs and facilities. The District has 5,000 to 10,000 tons at Redwood Berth 2, resulting in a potential $120,000-$240,000 in fees. The Staff recommends submitting a letter requesting a waiver of these fees for the Pulp Mill based on the public benefit of the site cleanup, one time nature of the project, and the District’s substantial investment in the cleanup. The letter of request would be an agenda item for the HWMA Board.

District Counsel said the EPA is really stepping up to the plate. He said any local contribution gives the District more leverage.

Commissioner Wilson spoke to Jill Geist from HWMA. He said the letter should make clear the waste is on public property.

COMMISSIONER NEWMAN ACCEPTED THE FRIENDLY AMENDMENT. COMMISSIONER DALE SECONDED THE FRIENDLY AMENDMENT.

Karen Brooks suggested to have a sign that thanks all those who have participated in the project. Commissioner Higgins said the Trinity Restoration program made an acknowledgment sign and it was great.

MOTION CARRIED WITHOUT DISSENT.

E. CONSIDERATION OF APPROVAL OF QUIT CLAIM DEED TO CALIFORNIA REDWOOD COMPANY FOR ROAD EASEMENT.

CEO said the easement was given to the Harbor District by Simpson with a clause that if not used within 5 years, it would be terminated. District Counsel said the District did not use the easement within the designated 5 years. The Quit Claim Deed would help California Redwood clean up their property.

COMMISSIONER HIGGINS MOTIONED FOR THE APPROVAL OF QUIT CLAIM DEED TO CALIFORNIA REDWOOD COMPANY FOR ROAD EASEMENT. COMMISSIONER DALE SECONDED.

Commissioner Wilson said it is useless to the Harbor District due to the location.

President Marks said it is a good neighbor gesture so that California Redwood does not have to file a bunch of other paperwork.

MOTION CARRIED WITHOUT DISSENT.

ADMINISTRATIVE AND EMERGENCY PERMITS: None

The Regular Meeting of the Board of Commissioners adjourned at 9:37 p.m.

APPROVED BY: ___________________________ RECORDING BY: ___________________________

__________________________  ___________________________
Greg Dale  Megan Smith
Secretary  Clerk
For Agenda of: October 23, 2014

Title:

10.a. Consideration of adoption of Resolution 2014-13 which establishes findings relative to the application by MLRX2, LLC for the MLRX2 Stormwater Improvement and Tide Gate Project.
10.b. Consideration of Granting Permit 14-06 to MLRX2, LLC for the MLRX2 Stormwater Improvement and Tide Gate Project.

Place on Agenda: Unfinished Business – 10.a. and b.

Summary of the Issue
MLRX2, LLC maintains a stormwater treatment system at 1200 Railroad Ave, Eureka, CA 95501. Stormwater generated at the site flows into three containment basins, from which it is pumped through a 10-micron bag filter and then through granular activated carbon beds before entering into a concrete skim-box and discharging to Humboldt Bay, CA. However, the system is not working effectively.
Specifically, sediment and organic material is plugging the system’s filters and carbon beds. Additionally, the functionality of the system’s tide gate is unknown. To address these issues, the project will decommission the system’s existing stormwater basins and construct a new basin. Additionally, the project will locate and repair or replace the system’s tidegate. Also, to better transport storm-water, the project involves grading and paving a current vehicle turnaround area and storage area. The project is further described in Permit Application 14-06 (Attachment A).

California Environmental Quality Act (CEQA) Review
The Project is exempt under the CEQA Class 2 Categorical Exemption (§15302) (Replacement or Reconstruction), which allows for replacement or reconstruction of existing structures and facilities where the new structure will be located in the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The CEQA Notice of Exemption is contained in Attachment B.
California Environmental Quality Act Notice of Exemption

Project Title: MLRX2 Stormwater Improvement and Tide Gate Project

Project Proponent:
MLRX2, LLC
1940 Home Avenue
Fortuna, CA 95540

Project Summary: The project involves filling and paving existing stormwater containment basins; grading and paving a current “vehicle turnaround area” and storage area; and constructing a concrete lined stormwater basin. The project also involves accessing and repairing or replacing an existing tidegate. These project components collectively comprise replacement and reconstruction of the site’s stormwater management system. The project location is 1200 Railroad Avenue, Eureka, CA 95501 (APNs 003-072-005 and -006).

Pertinent California Environmental Quality Act (CEQA) Exemption: CEQA Guidelines §15302 allow for replacement or reconstruction of existing structures and facilities where the new structure will be located in the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

Rationale for Exemption: The existing stormwater system at the project site would be repaired and partially replaced with a new stormwater system. The new stormwater system would be located at the same site and have substantially the same purpose and capacity as the existing stormwater system.

Contact: Jack Crider
Executive Director
Humboldt Bay Harbor, Recreation and Conservation District

Date October 18, 2014
Signature

Jack Crider, Executive Director
RESOLUTION NO. 2014-13

A RESOLUTION ESTABLISHING FINDINGS RELATIVE TO THE APPLICATION BY MLRX2, LLC FOR THE STORMWATER IMPROVEMENT AND TIDE GATE PROJECT AT 1200 RAILROAD AVENUE, EUREKA, CA 95501

WHEREAS, the Board of Commissioners of the Humboldt Bay Harbor, Recreation, and Conservation District is empowered by Appendix II of the Harbors and Navigation Code, and its own ordinances and resolutions, to grant permits, leases, rights, and privileges; and,

WHEREAS, no permits, rights, leases, and privileges may be granted without first having considered certain potential impacts and without first having made findings relative to said impacts; and,

WHEREAS, the Board of Commissioners of the Humboldt Bay Harbor, Recreation, and Conservation District has been presented with certain evidence relating to the MLRX2, LLC, Stormwater Improvement and Tidegate Project in Humboldt Bay by MLRX2. LLC, upon the air, land, environment, and ecology of the land under the jurisdiction of the Humboldt Bay Harbor, Recreation, and Conservation District.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District as follows:

The Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District has found the following to be true and adopts the following findings with respect to the proposed use contemplated by MLRX2. LLC in Application 14-06 and supplements and amendments thereto:

1. The use proposed by MLRX2. LLC is necessary to promote the safety, health, comfort, and convenience of the public; and

2. The proposed use is consistent with Humboldt Bay Management Plan policies including, but not limited to, CAE-3 (Protect and Maintain Environmentally Sensitive Habitat Areas) and CEP-5 (Water Quality Protection is Required); and

3. The proposed use is required by the public convenience and necessity; and

4. The proposed use is reasonably required to promote growth, and to meet area demands, and does not adversely affect the environment or ecology of the area to any substantial degree; and
5. The proposed use will not produce an unreasonable burden on the natural resources and aesthetics of the area, on the public health and safety, and air and water quality in the vicinity of Humboldt Bay, or on the parks, recreation and scenic area, historic sites and buildings, or archeological sites in the area.

PASSED AND ADOPTED by the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District at a duly called meeting held on the 23rd day of October 2014, by the following polled vote:

AYES:

NOES:

ABSENT:

Richard Marks, President
Board of Commissioners

ATTEST:

Greg Dale, Secretary
Board of Commissioners
CERTIFICATE OF SECRETARY

The undersigned, duly qualified and acting Secretary of the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, does hereby certify that the attached Resolution is a true and correct copy of RESOLUTION NO. 2014-13 entitled,

A RESOLUTION ESTABLISHING FINDINGS RELATIVE TO THE APPLICATION BY MLRX2, LLC, FOR THE STORMWATER IMPROVEMENT AND TIDE GATE PROJECT AT 1200 RAILROAD AVENUE, EUREKA, CA 95501

as regularly adopted at a legally convened meeting of the Board of Commissioners of the HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, duly held on the 23rd day of October 2014; and further, that such Resolution has been fully recorded in the Journal of Proceedings in my office, and is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October 2014.

Greg Dale, Secretary
Board of Commissioners
Attachment A

MLRX2 Stormwater Improvement and Tide Gate Project Permit Application
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

PERMIT

Permit No. 14-06

601 Startare Drive
Woodley Island Marina
P O Box 1030
Eureka, CA 95502-1030

Permittee:

MLRX2, LLC
1940 Home Avenue
Fortuna, CA 95540

The Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District hereinafter referred to as "District", having considered the Application herein, number 14-06, received by the District on August 19, 2014, and MLRX2, LLC., 1940 Home Avenue, Fortuna, CA 95540, hereinafter referred to as "Permittee", and the District as the lead agency, pursuant to the California Environmental Quality Act of 1970, as amended, having made a determination of a Notice of Exemption dated October 18, 2014 and the Board of Commissioners of the District having on October 23, 2014, passed Resolution No. 2014-13 establishing findings relative to the Application by Permittee for the storm water system replacement in Humboldt Bay, California provided for in this Permit, the Permittee is hereby authorized to perform the work of improvement, as more particularly described in the Application filed with the District and the CEQA Notice of Exemption referred to above.

You are hereby authorized to erect and construct that work of improvement described in the Permit Application of Permittee consisting of:

Replacement and reconstruction of the stormwater system upon Humboldt Bay waters and adjacent lands as more particularly described in the Application filed by Permittee.

That the location of the proposed work of improvement shall be located at 1200 Railroad Avenue, Eureka, CA 95501, being tideland Parcel No. APN 003-072-005, -006 in the City of Eureka, Humboldt County, California in the tide, submerged and upland lands of Humboldt Bay.

SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. That you promptly report the dates when you start and finish the work authorized by this Permit. If you find that you cannot complete the work within the time granted by this Permit, please ask for an extension before your Permit expires. If you materially change the plan and scope of the work, it will be necessary for you to request a revision of your Application and plans.
2. That all work authorized by this Permit shall further be subject to the approval of the following public agencies:

A. United States Army Corps of Engineers San Francisco District  
B. State of California Coastal Commission  
C. State of California Regional Water Quality Control Board, North Coast Region

and you shall fully comply with all regulations and conditions affecting such work as imposed by the above agencies.

3. That there shall be no unreasonable interference with navigation by the work herein authorized.

4. That no attempt shall be made by the Permittee to interfere or forbid the full and free use by the public of all navigable waters at or adjacent to the work.

5. That equipment, when not in use, will be stored in upland areas outside of the boundaries of waterways.

6. That extreme caution will be taken when handling and or storing chemicals (e.g. fuel and hydraulic fluid) near waterways to ensure no chemicals enter waterways.

7. That all trash and waste items will be properly contained and removed from the project area.

8. To prevent and address spill of equipment fuels, lubricants, and similar materials the repair and work shall incorporate the following measures:  
a. No equipment fueling, except vessels, shall occur on, within or immediately adjacent to the bay.  
b. All equipment used during construction shall be free of oil and fuel leaks at all times.  
c. Oil absorbent booms and/or pads shall be on site at all times during project construction and deployed if necessary in the event of a spill.  
d. All spills shall be reported immediately to the appropriate public and emergency services response agencies.  
f. Equipment working over water, below mean high water, shall use non-petroleum hydraulic fluid.

9. All construction debris shall be removed from the site and disposed of only at an authorized disposal site. Sidecasting of such material or placement of any such material within Humboldt Bay or any wetland area is prohibited.

10. If archeological or cultural features or materials are unearthed during any phase of project activity, all work in the immediate vicinity of the find shall halt until the Permittee has contacted the Wiyot Tribe’s Cultural Department, and the significance of the resource has been evaluated, to the satisfaction of the Wiyot Tribe. Any mitigation measures that may be
deemed necessary will be provided to the Wiyot Cultural Director for review and input to ensure they are consistent with the standards for cultural resource mitigation particularly in cooperation with Native American tribal representatives and the California State Native American Heritage Commission. Mitigation measures shall be implemented by a qualified archeologist representing the Permittee prior to resumption of construction activities. If human remains are exposed by project related activity, the Permittee shall comply with California State Health and Safety Code, §7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to the origin and disposition pursuant to California Public Resources Code, §5097.98.

11. That the Humboldt Bay Harbor, Recreation and Conservation District, its Commissioners, or any officer or employee of the Humboldt Bay Harbor, Recreation, and Conservation District shall in no case be liable for any damages or injury of the work herein authorized which may be caused by or result from future operations undertaken by the Humboldt Bay Harbor, Recreation and Conservation District for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

12. That neither the Humboldt Bay Harbor, Recreation and Conservation District, nor its Board of Commissioners, nor any officer of the District shall be liable to any extent for any such injury or damage to any person or property or for the death of any person arising out of or connected with the work authorized by this Permit.

13. That this Permit, if not previously revoked or specifically extended, shall cease and be null and void and terminate on the 23rd day of October 2015. This permit may be extended in annual increments for up to a total of nine (9) years at the discretion of the District.

14. That the Board of Commissioners of the District may revoke this Permit at any time upon a finding by the District of a violation by the Permittee of any condition of this Permit.

15. That the Permittee shall comply with any regulations, condition, or instructions affecting the work hereby authorized if and when issued by the Federal Water Pollution Control Administration and/or the State of California Water Resources Control Agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instruction in effect or prescribed by Federal or State Agencies are hereby made a condition of this Permit.

16. That neither the Humboldt Bay Harbor, Recreation and Conservation District, nor its Board of Commissioners, nor any officer of the District shall be liable to any extent for the injury or damage to any person or property or for the work authorized by this Permit, and the Permittee shall indemnify and hold harmless the District, its Commissioners and officers free and harmless from any liability for any such injury, death or damage.
17. That Permittee shall furnish to the Humboldt Bay Harbor, Recreation and Conservation District a written annual progress report and upon completion, a written completion report describing the completion of the project. Permittee shall at all times notify the Humboldt Bay Harbor, Recreation and Conservation District in writing of all locations, including new locations, in Humboldt Bay, that Permittee proposes to install the uses permitted herein, prior to said installation.

18. That as a condition to the issuance of this Permit, Permittee agrees to indemnify and hold harmless Humboldt Bay Harbor, Recreation and Conservation District from any and all liability, loss, or damage Humboldt Bay Harbor, Recreation and Conservation District may suffer from claims and demands for attorneys’ fees, costs of suit, and costs of administrative records made against Humboldt Bay Harbor, Recreation and Conservation District by any and all third parties as a result of third party environmental actions against Humboldt Bay Harbor, Recreation and Conservation District arising out of the subject matter of this Permit, including, but not limited to attorneys’ fees, costs of suit, and costs of administrative records pursuant to the California Code of Civil Procedure §1021.5 or any other applicable local, state or federal laws, whether such attorneys’ fees, costs of suit, and costs of administrative records are direct or indirect, or incurred in the compromise, attempted compromise, trial appeal or arbitration of claims for attorneys’ fees, costs of suit, and costs of administrative records in connection with the subject matter of this Permit.

19. That this Permit is valid as of the 23rd day of October 2014, and is made subject to the Permittee approving and agreeing to the conditions above set forth and executing said approval as hereinafter provided.
EXECUTED on this 23rd day of October 2014, by authority of the Board of Commissioners of the Humboldt Bay Harbor, Recreation and Conservation District.

RICHARD MARKS, President
Board of Commissioners
Humboldt Bay Harbor, Recreation and Conservation District

MLRX2, LCC, Permittee, in the above Permit, hereby accepts and agrees to all of the conditions hereinabove set forth. Permittee shall indemnify and hold harmless the Humboldt Bay Harbor, Recreation and Conservation District, its Board of Commissioners, officers and employees from any and all claims of any nature arising from the performance of and work of improvement contained in the Application for injury, death or damage to any person or property.

MLRX2, LCC., Permittee, in the above Permit, agrees to indemnify and hold harmless Humboldt Bay Harbor, Recreation and Conservation District, its Board of Commissioners, officers and employees from and against any and all liability, loss or damage District may suffer from claims and demands from attorneys’ fees; costs of suit and costs of administrative records made against District by any and all third parties as a result of third party environmental actions against District arising out of the subject matter of this Permit including, but not limited to, attorneys’ fees, costs of suit and costs of administrative records pursuant to the California Code of Civil Procedure §1021.5 or any other applicable local, state or federal laws, whether such attorneys fees, costs of suit and costs of administrative records are direct or indirect, or incurred in the compromise, attempted compromise, trial, appeal or arbitration of claims for attorneys’ fees, costs of suit and costs of administrative records in connection with the subject matter of this Permit.

Dated: October 23, 2014

MLRX2, LLC

By____________________

Title____________________
EMPLOYMENT AGREEMENT
With
Jack Crider

THIS AGREEMENT, made this 1st day of May, 2014 between the HUMBOLDT BAY HARBOUR, RECREATION AND CONSERVATION DISTRICT, a public entity, located in Humboldt County, California, herein referred to as "District", and Jack Crider, herein referred to as "Employee".

The parties recite that:

A. District is a public entity with legal duties, powers and obligations set forth in Sections 1 through 83 of Appendix 2 of the Harbors and Navigation Code of the State of California.

B. Employee is willing to be employed by District, and District is willing to employ Employee in the unclassified, at-will position of Executive Director on the terms and conditions hereinafter set forth.

C. The position of Executive Director is an unclassified service employee as defined in Section 73 of Appendix 2 of the Harbors and Navigation Code. Said position is an "At Will" position terminable at the will of either the employer or the employee.

FOR THE REASONS SET FORTH ABOVE, AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES HERETO, DISTRICT AND EMPLOYEE COVENANT AND AGREE AS FOLLOWS:

1. Pursuant to this Agreement, Employee is employed as Executive Director for the Humboldt Bay Harbor, Recreation and Conservation District effective May 1, 2014, and Employee hereby accepts and agrees to such employment.

2. Employee shall perform and complete the services and tasks set forth by the District Board of Commissioners.

3. Employee shall at all times faithfully, industriously, and to the best of his ability, experience, and talent perform all duties that may be required pursuant to the expressed and implicit terms as set forth by the Commission of the District. Such duties shall be rendered in Humboldt County, California and at such other place or places as District shall in good faith require or the interest, and needs or requests of District shall require or make advisable.

4. Employee shall serve in the position of Executive Director at the will and pleasure of the Commission of District. The Commission of the District or Employee may terminate this Agreement and terminate Employee's employment with or without cause at any time. In the event Employee desires to terminate employment with the District as Executive Director, it is expected that Employee shall give to District a minimum of thirty (30) days written notice of said intention to terminate. Employee shall be compensated for accrued benefits to the date of termination in accordance with the provisions of the Personnel Policy.

5. District shall pay Employee and Employee agrees to accept from District, in full payment of Employee's services for his position as Executive Director
hereunder, a salary of $120,000 with four (4) weeks of paid vacation and a flexible schedule that allows for 10 days on and 4 days off.

In addition to the foregoing, Employee shall receive the employee benefits for full time employees as now established by the District’s Personnel Policy, or different employee benefits as may be modified or established by the District in the future. However, nothing in this section or any other part of this Agreement shall be interpreted as preventing or precluding the District from rescinding, amending or otherwise modifying the existing Personnel Policy or from adopting additional personnel policies or procedures concerning the employment, including but not limited to modifications of the benefits of employment.

6. Employee’s salary, job duties and performance shall be reviewed in April of each year by the Commission of the District. The annual performance review may be used to adjust Employee’s salary based upon performance and/or cost of living, as negotiated and approved by the Board of Commissioners. However, nothing in this section shall be construed as a promise or commitment by the District to increase compensation, or concerning the amount of any such increase.

7. The effective date of appointment of Employee as Executive Director shall be May 1, 2014 and unless renewed, will terminate on April 30, 2015. In the event the Employee is terminated without cause or the Employee’s contract is not renewed, Employee will be given the opportunity to retire.

8. Employee shall devote his full time, attention, knowledge and skill solely and exclusively as Executive Director, solely and exclusively to the business and interest of the District. The position is considered to be an exempt position within the meaning of the California Labor Code for the purposes of wage and hour provisions. Employee’s workweek is not necessarily limited to 40 hours per week. Employee may be expected to work in excess of 40 hours per week if required to perform his duties as Executive Director at the regular monthly salary with no provision for overtime pay.

9. Employee is an unclassified employee as Executive Director. The position of Executive Director is not entitled to participate as a member of the International Longshoremen’s and Warehousemen’s Union AFL-CIO Local 14, Unit A, pursuant to the Union Contract with District and Executive Director is not included as a member of the bargaining unit represented by the Union.

10. Employee shall abide by all applicable provisions of District’s Personnel Policy as amended and with all other District policies and procedures currently in force or as may be implemented during the term of employment.

11. This written Agreement contains the sole and entire agreement between the parties. It supersedes any and all other agreements between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations including the execution and delivery hereof except such representations as are specifically set forth herein, and each party acknowledges that he/she or it has relied on his/her or its own judgment in entering into this Agreement. The parties further acknowledge that any statements or representations that may have heretofore been made by either
of them to the other are void and of no effect and that neither of them has
relied thereon in connection with his or its dealings with the other.

12. No waiver of modification of this Agreement or of any covenant, condition, or
limitation herein contained shall be valid unless in writing and duly executed
by the party to be charged therewith.

13. This Agreement and performance hereunder and all suits and special
proceedings hereunder shall be construed in accordance with the laws of the
State of California. In any action, special proceeding, or other proceedings
that may be brought arising out of, in connection with, or by reason of this
Agreement, the laws of the State of California shall be applicable and shall
govern to the exclusion of the law of any other form. Any legal proceedings
or actions arising out of this agreement shall be venued in Humboldt County,
California.

Executed at Humboldt County, California, on the date first above written.

HUMBOLDT BAY HARBOR, RECREATION AND
CONSERVATION DISTRICT

By, ________________________________
   Jack Crider- Employee
Humboldt Bay Harbor Recreation & Conservation District

AGREEMENT FOR PROFESSIONAL SERVICES

By October 1, 2014

This is an AGREEMENT for professional services between the Humboldt Bay Harbor Recreation and Conservation District (HBHRCD) (referred to as "CLIENT"), and SHN Engineers & Geologists (referred to as "CONSULTANT"), for providing Pre-Dredge Survey Services for 13 Humboldt Bay Facilities. (referred to as “PROJECT”).

1. SCOPE OF SERVICES

CLIENT agrees to engage CONSULTANT and CONSULTANT agrees to perform professional services for CLIENT in accordance with Exhibit A Scope of Work attached hereto and incorporated herein.

2. TERMS AND CONDITIONS

Services shall be performed to complete all tasks as specified in Exhibit A. All work and professional services will be provided by CONSULTANT and/or subcontractors to the CONSULTANT. Work shall be performed in a manner consistent with the usual and customary standards of the applicable profession. All work products and services shall be subject to review and acceptance by the CLIENT.

3. TERM

Services of CONSULTANT shall commence on the date that the CLIENT authorizes this AGREEMENT, and the AGREEMENT shall remain in effect until October 22, 2014, unless extended in writing by mutual agreement.

4. COMPENSATION & SCHEDULE

As compensation for the services performed hereunder, the CLIENT shall pay CONSULTANT a sum not to exceed $14,560.00 (fourteen thousand five hundred sixty dollars), which includes CONSULTANT services. This includes four Harbor District dock facilities for $6,920 and nine City of Eureka dock facilities for $7,640.

CONSULTANT to submit an invoice to the CLIENT, upon completion and acceptance of work. This sum is based on the plan scope of work – EXHIBIT A. Payment to be made within 21 days of acceptance of work by both the City of Eureka and CLIENT.

5. RELATIONSHIP OF PARTIES

The parties intend that CONSULTANT in performing services herein specified shall act as an independent consultant and shall have control over the work and the manner in which it is performed. CONSULTANT shall be free to contract for similar services to be performed for others while under contract with CLIENT. CONSULTANT shall also be free to subcontract portions of the work with other parties. CONSULTANT is not to be considered an agent or employee of CLIENT, and is not entitled to participate in any pension plans, worker's compensation insurance, or similar benefits.
6. INSURANCE REQUIREMENTS FOR CONSULTANT

CONSULTANT shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI.

- Commercial general liability at least as broad as ISO CG 0001 (per occurrence) \( \$1,000,000 \)
  (general aggregate) \( \$2,000,000 \)
- Commercial auto liability at least as broad as ISO CA 0001 (per accident) \( \$1,000,000 \)
- Errors and Omissions liability (per claim and aggregate) \( \$1,000,000 \)
- Workers’ compensation Statutory Limits

All insurance required by this section shall apply on a primary basis. CONSULTANT agrees that it will not cancel or reduce said insurance coverage. CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CLIENT may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CLIENT may take out the necessary insurance and pay, at CONSULTANT’s expense, the premium thereon.

Auto liability insurance shall cover owned, non-owned and hired autos. If CONSULTANT owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy.

At all times during the term of this Agreement; CONSULTANT shall maintain on file with CLIENT a certificate of insurance, in a form acceptable to CLIENT, showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnities as additional insured. CONSULTANT shall promptly file with CLIENT such certificate or certificates and endorsements if applicable. Coverage for the additional insured shall apply to the fullest extent permitted by law.

No policy required by this section shall prohibit CONSULTANT from waiving any right of recovery prior to loss. CONSULTANT hereby waives such right with regard to the Indemnities. All insurance coverage and limits provided by CONSULTANT and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

7. HOLD HARMLESS AND INDEMNIFICATION

CONSULTANT shall indemnify, defend and hold harmless CLIENT and its employees, officials and agents (the Indemnities) from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, courts costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by CONSULTANT or by any individual or entity for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or subcontractors of CONSULTANT.

Notwithstanding the foregoing, the CONSULTANT shall not be liable to indemnify CLIENT for damage arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of CLIENT, or their employees.
8. CONTRACT TERMS TO BE EXCLUSIVE

This written AGREEMENT contains the sole and entire AGREEMENT between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this AGREEMENT or any representations inducing the execution and delivery hereof except such representations as are specifically set forth herein; and each party acknowledges that it has relied on its own judgment in entering into the AGREEMENT. The parties further acknowledge that any statements or representations that may have therefore been made by either of them to the other are void and of no effect and that neither of them has relied thereon in connection with its dealings with the other.

9. WAIVER OR MODIFICATION INEFFECTIVE UNLESS IN WRITING

No waiver or modification of this AGREEMENT or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by both parties. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this AGREEMENT, or the rights or obligations of any party hereunder, unless such waiver of modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

10. CONTRACT GOVERNED BY LAW OF STATE OF CALIFORNIA

This AGREEMENT and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, in connection with, or by reason of this AGREEMENT, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

11. CONTRACT TERMINATION

This is a limited term AGREEMENT and there is no termination provision. All papers and documents relating to the services described in the AGREEMENT, and all materials supplied to the CLIENT will remain the property of the CLIENT.

12. BINDING EFFECT OF AGREEMENT

This AGREEMENT shall be binding on and inure to the benefit of the respective parties and their respective legal representatives, successors, and assigns except as provided above.

HBHRCD

By: ________________________________
    Jack Crider  CEO

SHN

Date: ______________________________

By: ________________________________
    ____________________
    SHN

Date: ______________________________

HBHRCD Agreement  Page 3 of 4  October 2014
EXHIBIT A SCOPE OF WORK

Pre-Dredge Bathymetric Survey – 13 Humboldt Bay sites
Due to ongoing hydrological conditions, sediments accumulate at these dock facilities, resulting in reduced navigation depth for marine vessels. The survey will determine the current configuration at each site, and calculate the quantity of materials to be removed to reach design depths.

The District contracts with SHN Engineers & Geologists (hereafter “Surveyor”) to conduct survey of the dock facilities referenced below and prepare a report containing the survey results. SHN will complete Pre-Dredge Bathymetric Surveys for the following Harbor District and City of Eureka owned and operated dock facilities on Humboldt Bay:

**HARBOR DISTRICT FACILITIES**
- Woodley Island Marina
- Redwood Terminal Berth 1
- Redwood Terminal Berth 2
- Fields Landing Boat Yard

**CITY OF EUREKA FACILITIES**
- Bonnie Gool Guest Dock & Dock B
- I, F, C & Commercial Street Docks
- Eureka Fisherman’s Terminal
- Samoa Bridge Boat Ramp
- Eureka Boat Basin

**Required Tasks and deliverables:**
Surveyor shall provide bathymetric surveys at each facility, as shown on the attached figure. Bathymetry to be produced at a mapping scale of 1" = 40' with 1' contours, relative to mean lower-low water (MLLW). All work shall be performed under the supervision of a licensed surveyor or other individual authorized to practice land surveying in California.

All survey measurements will be made using a Trimble R8 RTK GPS system. Published measurement specifications for this system are as follows:

**Real-time Kinematic (RTK) mode**
- Horizontal: 8mm (0.03 ft) + 1ppm RMS
- Vertical: 15mm (0.05 feet) +1ppm RMS

**Static Mode**
- Horizontal: 3mm (0.01 ft) + 0.1ppm RMS
- Vertical: 3.5mm (0.01 ft) + 0.4ppm RMS

The RTK base receiver will be placed on a durable survey control point central to the various project sites. This receiver will function simultaneously in Static and RTK mode, allowing the base position to be postprocessed for a precise horizontal and vertical position relative to California State Plane Coordinate System (NAD 83 CORS) and the North American Vertical Datum of 1983 (NAVD88). Elevations will then be adjusted to Mean Lower Low Water (MLLW) using published datum conversions for Humboldt Bay. By using State Plane coordinates, the survey data will easily integrate with current and future geo-referenced GIS data. Bathymetric survey data will be collected using the Trimble R8 GPS rover receiver in conjunction with a Seafloor Systems, Inc. Sonarmite single beam sonar unit. This unit has a published depth accuracy of 1cm/0.1% of depth.

**CLIENT** to provide 28 foot aluminum Port Authority Vessel for the survey work. SHN is responsible to loading survey equipment onto vessel and directing the District’s vessel pilot to the survey areas. All equipment to be temporarily attached to vessel and removed upon survey completion. Vessel use limited, and subject to District vessel pilot availability.
Raw survey data points will be processed in combination with the echosounder depth measurements and checked for Quality Control. The resulting measurements will be imported into an Autodesk Civil 3D 2014 drawing file, and a surface model generated. Edge of water and docks and structures will be located using a combination of survey measurements and publically available geo-referenced aerial imagery.

**Deliverables** an Autodesk Civil 3D 2014 (or compatible) DWG file depicting edge of water, existing docks and structures, bathymetric contours, and containing a triangulated irregular network (TIN) surface model, and an exhibit of the survey map in hard copy. A Report detailing survey methods, results and equipment used to be provided.
August 18, 2014

Humboldt Bay Harbor District
P.O. Box 1030
Eureka, California 95502-1030
Attn: Jack Crider

RE: Terms of Engagement

Dear Mr. Crider:

This letter confirms the engagement of Bocarsly Emden Cowan Esmail & Arndt LLP (the "Firm") by the Humboldt Bay Harbor District (the "District") in connection with providing tax and legal advice with respect to the Humboldt Bay Harbor District's development of the Humboldt Bay Eco-Industrial Park facilities (the "Project") utilizing equity from the syndication of New Market Tax Credits. The Firm is a limited liability partnership registered under California Corporations Code Section 16939.

Services

As representative of the District, you have asked us to render tax and legal advice in connection with the foregoing on behalf of the District. The District will bear all costs of our services.

Fees and Expenses

The Firm will strive to ensure that our work is done efficiently. The Firm will charge for its services based upon the amount of time it takes to render them. The Firm's time will be billed to the District at the Firm's usual hourly rates charged for the attorneys and legal assistants who perform the services. The Firm may involve other attorneys and/or legal assistants in order to perform this engagement competently and as prudent to minimize fees. The undersigned's hourly rate is currently $605, and hourly rates for other attorneys in the Firm who might be called on to work on this matter currently range from $260 to $605; legal assistant rates range from $115 to $260. These rates are reviewed and adjusted from time to time to reflect changes in our costs of doing business.

In addition to the Firm hourly charges or fixed fee, the District may also be billed for standard costs and disbursements such as photocopying, long distance telephone, facsimile and the like; for reasonable travel expenses, if travel is required; and for various fees and costs. A copy of our disbursements policy is attached.

It is our practice to obtain a reasonable retainer at the time we initiate the engagement. Please forward a retainer of $2,500 for our Firm's initial services. The retainer will be applied
against fees and costs due us, with any excess amounts to be returned to the District. All bills not covered by the retainer will be due and payable in net 30 days. Bills will be itemized to describe the specific services provided and costs incurred by attorney and date. In the event the District fails to pay our statements on a timely basis, the Firm may require us to cease working on the District’s matter.

Termination

The District will have the right to terminate the Firm services at any time for any or no reason. The Firm will also have the same right, subject to an obligation to give the District reasonable notice to arrange for alternative representation of the District.

The Firm wishes to point out that, as a law firm with a diversified legal practice, it is often called upon to represent clients in many fields and with different interests. The Firm agrees that it will not represent any other client or prospective client in the matters which are related to, and adverse to, those for which we have been engaged by the District without the District’s written consent. At the same time, by accepting this letter, the District consents to the Firm’s representation now and in the future of any client on matters unrelated to the Firm’s engagement with the District as set forth in this letter or any other open engagements between the Firm and the District, even if that representation is adverse to the District and whether or not litigation adverse to the District is contemplated. The District agrees to enter into conflict waivers that will allow the Firm to represent the Firm’s current clients in matters even where the District is involved. The District should, of course, feel free to consult with separate counsel, if that might be helpful to the District, before providing its consent.

Written Consent Required

Because California law requires that in certain circumstances the Firm obtains the District’s written consent to this engagement, it would be greatly appreciated if the District would signify its consent to the terms of this letter by signing a copy and returning it to the undersigned.
It is a pleasure to represent the District and we look forward to working with the District on this new matter. If you should have any questions about this letter or about our work for you, please do not hesitate to call me at 213-239-8015.

Very truly yours,

Eugene G. Cowan
of BOCARSLY EMDEN COWAN ESMAIL & ARNDT LLP

EGC:wn

ACKNOWLEDGED AND ACCEPTED:

HUMBOLDT BAY HARBOR DISTRICT:

By:

Its: C.E.O
BOCARNLEY EMDEN COWAN ESMAIL & ARNDT LLP
CLIENT BILLING AND PAYMENT GUIDELINES

BECEA’s billing and payment guidelines are outlined below. Our goal is to provide clients with accurate and timely account information and to answer any billing and payment questions that occur during the engagement.

For questions or further information, please contact us at (213) 239-8011.

Billing Information:

☐ Invoices will be mailed monthly, unless both parties have agreed to an alternative billing cycle.

☐ The standard billing format includes:
  • Date
  • Timekeeper
  • Narrative description of work performed
  • Total hours worked by date
  • Summary of hours worked by timekeeper

☐ Please advise BECEA of any billing guidelines for outside counsel and/or requests to modify the standard billing format during the first 30 days of the engagement.

☐ Per a client’s special request, we will send the invoices initially to a third party (i.e. insurance company). In such cases, the client is requested to advise the billing attorney. Please note: Clients remain responsible for full payment of services if the third party does not pay the invoice in full or in a timely manner.

Disbursements - Costs incurred internally by BECEA are charged as follows:

- Couriers, delivery service and express mail at actual cost.
- Postage for large volume mailings, at actual cost.
- Facsimile transmissions at $.35 per page for outgoing and no charge for incoming.
- In office copies at 25¢ per page (includes photocopies, laser printing, and document production center)
- Telecommunications, at the cost invoiced by the vendor for itemized transactions.
- Automated research services such as Westlaw and Lexis, at vendor rates with no mark-up.
- Secretarial overtime for rush projects, at $75 for regular time and $95 for double time.
- All other charges, at actual cost.
- Significant costs (items exceeding $250) incurred on behalf of clients by outside vendors will be invoiced directly to the client by the outside vendor, when feasible, or forwarded to the client by BECEA for direct payment.

Payment Information:

☐ Payments are due net upon receipt of the invoice unless other arrangements have been made with BECEA. BECEA accepts checks, EFT, and wire transfers.

☐ Please remit payments to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 W. 5th Street, 70th Floor
Los Angeles, CA 90071

☐ If applicable, our wire transfer instructions are as follows:

First Republic Bank
1888 Century Park East
Los Angeles, California 90067
For the account of: Bocarsly Emden Cowan Esmail & Arndt LLP
ABA Routing number – 321081669
Account Number - 997-00057419

Engagement Letter. Humboldt Bay Harbor District
In the effort to control your district’s electricity costs without disrupting your operations, Utility Cost Management LLC (UCM) offers a risk-free, hassle-free solution to CSDA members. As an Endorsed Affiliate of CSDA, UCM’s Bill Analysis Service has generated millions in savings and refunds on gas and electricity charges for over 60 California special districts since 1991.

UCM’s Bill Analysis Service provides an unbiased, in-depth look into the rates and tariffs on your gas and electricity billings, then presents you with any cost-saving and refund opportunities.

Best of all, UCM offers its Bill Analysis Service on a contingency fee basis; if UCM’s efforts result in refunds or savings for your district, UCM is paid a percentage of those savings or refunds. Otherwise, there is no fee at all.

Below are just some of the California Special Districts UCM has worked with:

* Metropolitan Water District of Southern California * Sweetwater Authority * Santa Margarita Water District * South Coast Water District * Castaic Lake Water Agency * Olivehain Municipal Water District * Nipomo Community Services District * Hi-Desert Water District * Pebble Beach Community Services District * Goleta Sanitary District * Fallbrook Public Utilities District * Lamont Public Utilities District * Laton Community Services District * West County Wastewater District * Pleasant Valley Recreation & Park District * Costa Mesa Sanitary District * San Mateo County Harbor District * Rubidoux Community Services District * Western Municipal Water District * Chico Area Recreation & Park District * Livermore Area Recreation & Park District * Valley-Wide Recreation & Park District * And many more!

As a CSDA member, your district is entitled to a special discount on UCM’s services. Call UCM today at 559.261.9230 or email info@utilitycostmanagement.com to find out more!

www.utilitycostmanagement.com
Case Examples

Case Examples

UCM takes pride in identifying and implementing client savings that are beyond the capabilities of other firms. We believe our thorough understanding of utility tariffs and regulations, combined with our willingness to “go the extra mile” to deliver results, sets UCM apart.

A sampling of past client engagements demonstrates the lengths that UCM will go to ensure that client utility charges are minimized.

University – Billing Errors…Learn more

UCM reviewed the utility accounts for a public university and the 500,000 square feet student-occupied apartment building that it owns. UCM identified various billing errors, including a sewer overcharge of about $1,000 per month. By using the utility’s microfiche records, we were able to document that the error had been occurring for more than 14 years, and eventually we persuaded the utility that our client should receive a refund for the entire period. A refund of $167,000 was paid for the sewer overcharges. In total, the university received more than $200,000 in refunds, and reduced ongoing costs by more than $75,000 per year.
Milk Processor – PUC Representation...Learn more

City – Electricity Billing Error...Learn more

UCM reviewed approximately 350 gas and electricity accounts serving a Southern California city. UCM determined that more than 50 small electricity accounts were eligible for a special rate schedule because their load factor exceeded 90%. The utility disagreed, contending that none of the accounts met the requirement of the appropriate tariff. UCM eventually convinced the utility that its load factor calculations were incorrectly based on maximum demand readings, rather than peak period demand readings. The end result was that over $40,000 in refunds were paid to the city.

Hotel – Special Facilities Fee...Learn more

Low Income Housing – PUC Representation...Learn more

Multifamily Housing – Utility Management Services...Learn more

School District – Improper Rate Increase...Learn more

Office Building – Billing Errors...Learn more

UCM identified two billing errors affecting a 600,000 square feet office building. First, sewer charges were excessive because they did not account for evaporation losses through the building’s cooling system. UCM worked with the local water utility to develop a reasonable estimate of the actual sewage flow, which has resulted in lower bills. In addition, UCM reduced electricity charges by eliminating surcharges that the client should not have been required to pay. UCM’s work to correct these two errors resulted in refunds totaling $600,000 and annual savings of more than $100,000.

Cotton Ginners – PUC Representation...Learn more

Fruit Packer – Evaluation of Equipment Upgrade...Learn more

Utility Cost Management, LLC | 6475 N. Palm Avenue, Suite 105 | Fresno, CA 93704 | Tel: (559) 261-9230 | info@utilitycostmanagement.com Copyright © 2014
AGREEMENT TO PROVIDE
UTILITY BILL AUDITING SERVICE

This agreement is made by and between Utility Cost Management LLC ("UCM") and the entity signing below ("Client") as follows:

1. Applicable to Client’s Utility Accounts. This Agreement applies to all water, sewer, garbage, gas and electricity accounts (and any related utility user taxes, other taxes, assessments, surcharges or fees) with respect to which Client:
   (a) is receiving utility service as of the Effective Date (as defined below),
   (b) has received utility service within three years prior to the Effective Date,
   (c) receives utility service within one year after the Effective Date, or
   (d) has permitted or authorized UCM to obtain a copy of the utility bill.
   The water, sewer, garbage, gas and electric accounts described in this paragraph are hereinafter referred to as “Utility Accounts”. The “Effective Date”, as that term is used above, is the first day of the calendar month after both UCM and Client have signed this Agreement.

2. Client to Provide Utility Bills. On or promptly after Client’s execution of this Agreement, Client will provide UCM with a copy of at least one month’s utility bills for all of Client’s Utility Accounts.

3. UCM Authorized to Obtain Information on Utility Accounts. UCM is hereby authorized to obtain and review information relating to the Utility Accounts.

4. UCM’s Findings Letter. UCM will use its best efforts to identify the basis for any refunds, credits or Future Savings (as defined below) on Client’s Utility Accounts. UCM will send a “Findings Letter” to Client that generally sets forth the basis for any refunds, credits or Future Savings identified by UCM. UCM may, from time to time, supplement or amend its Findings Letter, and such supplement or amendment will be deemed to have occurred on the date the original Findings Letter was sent to Client.

5. Steps to Obtain Refunds or Savings. UCM is authorized by Client to take steps to obtain the refunds, credits or Future Savings identified in the Findings Letter. Such steps may include, but are not limited to, communicating, negotiating and dealing with utility providers (or, in the case of utility user taxes or other governmental charges, the appropriate government entity), and seeking relief from the California Public Utilities Commission in a complaint proceeding or other proceeding.

6. Cooperation By Client. Client will cooperate with UCM, as reasonable, in UCM’s efforts to carry out the purposes and intent of this Agreement. Such cooperation will include, but not be limited to, providing information upon request by UCM concerning Client’s utility expenditures, utility service and operations.

7. UCM’s Compensation.

UCM’s compensation will consist of the amounts set forth in both (a) and (b) below.

(a) Refunds or Credits. If Client receives a refund or credit that was identified in the Findings Letter, then Client will pay to UCM 42% of the amount refunded or credited. The amount of the refund or credit for this purpose will include all amounts refunded or credited (including any portion attributable to interest) for any overcharges that were incurred by Client prior to the date that the overcharges no longer appeared on the Client’s utility bill. Payment of UCM’s 42% compensation is due within 30 days of the date UCM mails an invoice to Client.

(b) Future Savings. If Client obtains Future Savings that were identified in the Findings Letter, then Client will pay UCM 42% of such Future Savings that accrue during a Three-Year Savings Period. “Future Savings” is the amount by which Client’s charges on its Utility Accounts are reduced as a result of a change in the billing rate, calculation, method or procedure. Future Savings will be calculated as the difference between the amount Client was billed on its Utility Accounts during the Three-Year Savings Period, and the amount that it would have been billed on its Utility Accounts during the Three-Year Savings Period if there had been no change in its billing rate, calculation, method or procedure. The Three-Year Savings Period begins on the date that the change in the billing rate, calculation, method or procedure is first reflected on Client’s utility bill, and ends three years thereafter. UCM will
submit invoices periodically to Client for payment based on the Future Savings as they accrue. The invoices will verify (a) that Future Savings have actually been realized by Client, and (b) the amount of such Future Savings. Payment of UCM’s invoices is due within 30 days of the date the invoices are mailed to Client. The compensation under this subparagraph will not include compensation for Future Savings that are: (a) the result of a reduction in the amount of utility usage by Client, or (b) the result of Client’s utilization of a different utility supplier that provides lower cost utility service.

(c) No Compensation for Pending Claim. Client is not obligated to pay UCM pursuant to this paragraph for any refund, credit or Future Savings received by Client for which Client had submitted to the utility provider a written claim prior to the date of UCM’s Findings Letter. However, Client is obligated to pay UCM pursuant to this paragraph whether or not Client knew of the basis for the refund, credit or Future Savings prior to the date of UCM’s Findings Letter, and whether or not Client’s receipt of the refund, credit or Future Savings was the result of steps taken by UCM or others, including attorneys.

8. Termination; Effect. This Agreement will terminate 7 days after either party faxes a written notice of termination to the other party. Upon termination, UCM will cease all work on behalf of Client. However, if termination occurs after UCM has sent its Findings Letter to Client, then Client will remain obligated to pay UCM, pursuant to this Agreement, for any refunds, credits or Future Savings that were identified in the Findings Letter and that are thereafter obtained by Client. UCM may continue to obtain and review Client’s utility billing and other information following termination in order to periodically verify whether Client has obtained a refund, credit or Future Savings that was identified in the Findings Letter.

9. If Client Is Not Utility Customer. By providing a copy of any utility bill to UCM, Client is hereby agreeing that the Utility Account represented by such bill will be governed by this Agreement, regardless of whether or not Client is the Utility Customer with respect to such Utility Account. For purposes of this Agreement, the Utility Customer is the entity that (i) is named on the Utility Account as reflected by the utility bill, (ii) receives the utility service on the Utility Account, (iii) pays for or is liable for the charges on the Utility Account, or (iv) is the owner of the property at which the utility service is provided on the Utility Account. If Client is not the Utility Customer for a Utility Account then, with respect to that Utility Account, Client represents that it is signing this Agreement in its capacity as agent for the Utility Customer, and as such is authorized to legally bind the Utility Customer to the terms of this Agreement. Client further agrees that the terms of this Agreement will be equally binding on both Client and Customer, that all references in this Agreement to “Client” will also be deemed to be references to the Utility Customer, and that Client and the Utility Customer will be jointly and severally liable for payment of UCM’s compensation under this Agreement.

10. No Legal Services. Client acknowledges and understands that: (1) Only an attorney can provide legal services or advice, (2) UCM is not an attorney or law firm, and does not and will not provide legal services or advice, (3) UCM does not and will not act as an attorney for Client or any other person, (4) Nothing in this Agreement, and no act, omission or statement by UCM, or its owners or employees, will be construed to create an attorney-client relationship between UCM and Client or any other person, (5) UCM is not subject to the California Rules of Professional Conduct, which govern the conduct of attorneys, and (6) Client should consult an attorney if it wishes to receive legal services or advice.

11. Disclosure of Information. UCM may obtain information that pertains to Client’s business, operations, or affairs, including but not limited to its utility charges and utility usage. Client expressly authorizes UCM to use and disclose such information to others as necessary or convenient to carry out the services contemplated by this Agreement.

12. Release of Claims Against UCM. Client acknowledges and agrees that UCM has made no express or implied representation or warranty that it will be successful in obtaining any refunds, credits, or Future Savings on Client’s Utility Accounts. Client hereby waives, releases and forfeits any current or future claim against UCM that is based upon or relates to any failure by UCM to identify or obtain refunds, credits, or Future Savings to which Client may be entitled, or that is based upon or relates to any services or advice provided by UCM.

13. Representations Made By Client. It may become necessary for Client to make certain representations to the utility provider or other entity in order obtain refunds, credits or Future Savings identified by UCM in its Findings Letter. Client hereby warrants that any such representations made by Client will be true and correct in all respects. Client understands and agrees that it is Client’s responsibility, and not UCM’s, to ensure that any such representations made by Client are true and correct in all respects. Client will indemnify and hold UCM harmless for any loss, damage, injury or

Initials: _______  Initials: _______
claim arising from or related to any false or allegedly false statements made by Client to the utility provider or other entity in connection with any refund, credit or Future Savings identified by UCM.

14. Late Payment Penalty. If payment of any invoice is not received by UCM within 30 days of the date the invoice was mailed, then interest on the amount owing will accrue, beginning on the 31st day after the invoice was mailed to Client, at the rate of 1% per month (prorated on a daily basis). In addition, if any payment is not received by UCM within 60 days of the date the invoice was mailed to Client, then a fee equal to 5% of the amount owing (including any accrued interest) will be imposed on the 61st day after the invoice was mailed. Interest will continue to accrue at 3% per month (prorated on a daily basis) on the entire amount due until paid in full.

15. Applicable Law. This Agreement is executed in and intended to be performed in the State of California, and the laws of that state will govern its interpretation and effect.

16. Venue. Venue in any legal action arising from or related to this agreement will be Fresno County, California.

17. Paragraph References. A reference to a “paragraph” of this Agreement includes both the numbered paragraph, as well the subparagraphs, if any, that are part of such paragraph. Subparagraphs are designated by lower case letters (e.g., “(a)”, “(b)”, “(c)”).

18. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19. Interpretation. In construing this Agreement, no consideration shall be given to the fact or presumption that any party had a greater or lesser hand in drafting of this Agreement.

20. Entire Agreement. This instrument contains the entire Agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged.

21. Signor Authorized to Bind Client. The individual signing this agreement on behalf of Client hereby represents and warrants that he/she is authorized to sign on behalf of the Client and to legally bind Client to the terms of this Agreement.

---

**UTILITY COST MANAGEMENT LLC**

By:  

Signature  

Print Name  

Title  

Date

---

**CLIENT**

By:  

Signature  

Print Name  

Title  

Date

Initials: ______  Initials: _____
EXHIBIT A - AUTHORIZATION TO RECEIVE CUSTOMER INFORMATION OR ACT ON A CUSTOMER'S BEHALF

THIS IS A LEGALLY BINDING CONTRACT. READ IT CAREFULLY.
(Please Print or Type)

Fill In:

NAME

TITLE (IF APPLICABLE)

of

(Customer) have the following mailing address
d, and do hereby appoint

MAILING ADDRESS

CITY

STATE

ZIP

UTILITY COST MANAGEMENT, LLC

NAME OF THIRD PARTY

of

6475 N. PALM AVENUE, SUITE 105

MAILING ADDRESS

FRESNO

CA

93704

STATE

ZIP

to act as my agent and consultant (Agent) for the listed account(s) and in the categories indicated below:

ACCOUNTS INCLUDED IN THIS AUTHORIZATION:

1. SERVICE ADDRESS

CITY

SERVICE ACCOUNT NUMBER

2. SERVICE ADDRESS

CITY

SERVICE ACCOUNT NUMBER

3. SERVICE ADDRESS

CITY

SERVICE ACCOUNT NUMBER

(For more than three accounts, please list additional accounts on a separate sheet and attach it to this form.)

INFORMATION, ACTS AND FUNCTIONS AUTHORIZED – This authorization provides authority to the Agent. The Agent must thereafter provide specific written instructions/requests (e-mail is acceptable) about the particular account(s) before any information is released or action is taken. In certain instances, the requested act or function may result in cost to you, the customer. Requests for information may be limited to the most recent 12 month period.

I (Customer) authorize my Agent to act on my behalf to perform the following specific acts and functions (initial all applicable boxes):

Initial □ 1. Request and receive billing records, billing history and all meter usage data used for bill calculation for all of my account(s), as specified herein, regarding utility services furnished by the Utility.

Initial □ 2. Request and receive copies of correspondence in connection with my account(s) concerning (initial all that apply):

Initial □ a. Verification of rate, date of rate change, and related information;
Initial □ b. Contracts and Service Agreements;
Initial □ c. Previous or proposed issuance of adjustments/credits; or
Initial □ d. Other previously issued or unresolved/disputed billing adjustments.

Initial □ 3. Request investigation of my utility bill(s).

Initial □ 4. Request special metering, and the right to access interval usage and other metering data on my account(s).

Initial □ 5. Request rate analysis.

Initial □ 6. Request rate changes.

Initial □ 7. Request and receive verification of balances on my account(s) and discontinuance notices.

The Utility will provide standard customer information without charge up to two times in a 12 month period per service account. After two requests in a year, I understand I may be responsible for charges that may be incurred to process this request.

Third Party Inquiries Regarding Individual Customers, USP 23
Revised 1/11/00
EXHIBIT A - AUTHORIZATION TO RECEIVE CUSTOMER INFORMATION OR ACT ON A CUSTOMER'S BEHALF

I (CUSTOMER) AUTHORIZE THE RELEASE OF MY ACCOUNT INFORMATION AND AUTHORIZE MY AGENT TO ACT ON MY BEHALF ON THE FOLLOWING BASIS\(^2\) (Initial one box only):

\(\square\) One time authorization only (limited to a one-time request for information and/or the acts and functions specified above at the time of receipt of this Authorization).

\(\square\) One year authorization - Requests for information and/or for the acts and functions specified above will be accepted and processed each time requested within the twelve month period from the date of execution of this Authorization.

Initial \(\square\) Authorization is given for the period commencing with the date of execution until \(\square\) (Limited in duration to three years from the date of execution.) Requests for information and/or for the acts and functions specified above will be accepted and processed each time requested within the authorization period specified herein.

RELEASE OF ACCOUNT INFORMATION:

The Utility will provide the information requested above, to the extent available, via any one of the following. My (Agent) preferred format is (check all that apply):

\(\square\) Hard copy via US Mail (if applicable). See page 1

\(\square\) Facsimile at this telephone number: \(\square\) (559) 261-9231

\(\square\) Electronic format via electronic mail (if applicable) to this e-mail address: \\

Print \(\square\) (Customer) \(\square\) (print name of authorized signatory), declare under penalty of perjury under the laws of the State of California that I am authorized to execute this document on behalf of the Customer of Record listed at the top of this form and that I have authority to financially bind the Customer of Record. I further certify that my Agent has authority to act on my behalf and request the release of information for the accounts listed on this form and perform the specific acts and functions listed above. I understand the Utility reserves the right to verify any authorization request submitted before releasing information or taking any action on my behalf. I authorize the Utility to release the requested information on my account or facilities to the above Agent who is acting on my behalf regarding the matters listed above. I hereby release, hold harmless, and indemnify the Utility from any liability, claims, demands, causes of action, damages, or expenses resulting from: 1) any release of information to my Agent pursuant to this Authorization; 2) the unauthorized use of this information by my Agent; and 3) from any actions taken by my Agent pursuant to this Authorization, including rate changes. I understand that I may cancel this authorization at any time by submitting a written request. [This form must be signed by someone who has authority to financially bind the customer (for example, CFO of a company or City Manager of a municipality).]

Sign Here →

AUTHORIZED CUSTOMER SIGNATURE

Executed this \(\square\) day of \(\square\) MONTH \(\square\) YEAR

TELEPHONE NUMBER

at \(\square\) CITY AND STATE WHERE EXECUTED

Third Party Inquiries Regarding Individual Customers, USP 23
Revised 1/11/00
I (Agent), hereby release, hold harmless, and indemnify the Utility from any liability, claims, demand, causes of action, damages, or expenses resulting from the use of customer information obtained pursuant to this authorization and from the taking of any action pursuant to this authorization, including rate changes.

AGENT SIGNATURE

COMPANY

Executed this ________ day of ________ month ________ year

TELEPHONE NUMBER

Third Party Inquiries Regarding Individual Customers, USP 23
Revised 1/11/00