

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

**DATE:** June 9, 2017  
**TIME:** Regular Session – 5:00 PM  
**PLACE:** Shelter Cove Resort Improvement District- Meeting Room  
9126 Shelter Cove Road, Whitethorn, CA 95589

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

1. Call to Order at 5:00 p.m.
2. Pledge of Allegiance
3. 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.*

4. Consent Calendar
5. Communications and Reports
  - a. Executive Director Report
  - b. Staff Reports
  - c. Commissioner and Committee Reports
  - d. Other
    - Fishing Community Sustainability Plan- Laura Casali
6. Non Agenda
7. Unfinished Business
  - a. Consideration of First Amendment to Solar Energy Power Purchase and Sale Agreement with Renewable Energy Capital LLC.
  - b. Consideration of grant agreement with California Natural Resources Agency for \$200,000 for implementation support of the Eureka Littoral Cell Coastal Regional Sediment Management Plan.
8. New Business
  - a. Consideration of acceptance of Martin Slough Restoration Permit 2017-02 for filing.
  - b. Consideration of Master Consulting Agreement with ICF Jones & Stokes- Adam Wagschal
  - c. Consideration of purchase of: 1) Travellift wire rope \$8,000. 2) Dredge pipe \$16,000. 3) Redwood Electrical (Red Tank dock) \$8,500.
  - d. Discussion Shelter Cove operations and planned improvements.
  - e. Consideration of Shelter Cove rate changes effective July 1, 2017.
9. Administrative and Emergency Permits
  - a. Administrative Permit A-2017-01 Holland Levee Repair
10. Adjournment

May 15, 2017

**FIRST AMENDMENT TO  
SOLAR ENERGY POWER PURCHASE AND SALE AGREEMENT**

This FIRST AMENDMENT TO SOLAR ENERGY POWER PURCHASE AND LICENSE AGREEMENT ("First Amendment") is made and entered into as of this 15th day of May, 2017, by and between Renewable Energy Capital LLC ("Seller") and Humboldt Bay Harbor, Recreation and Conservation District ("Buyer"). Buyer and Seller are collectively referred to herein as "Parties" and individually as "Party."

**RECITALS**

**WHEREAS**, Seller and Buyer have previously entered into that Solar Energy Power Purchase and License Agreement, dated September 20, 2016 (the "Agreement");

**WHEREAS**, under the Agreement, Seller and Buyer agreed to terms relating to the design, installation, ownership and maintenance of a System and the purchase and sale of the electricity generated by such System at the Redwood Marine Terminal II, located at 364 Vance Ave., Samoa, CA 95564, operated by Buyer; and

**WHEREAS**, the Parties now wish to amend the Agreement.

**NOW, THEREFORE**, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Seller and Buyer hereby agree as follows:

1. Incorporation of Recitals. Seller and Buyer acknowledge that the above recitals are true and correct, and incorporate those recitals by reference into this First Amendment.
2. License Fee.
  - a. Section 2.4 of the Agreement shall be amended to change "\$20,000" to "\$14,000."
  - b. Exhibit C to the Agreement shall be amended to change "\$20,000" to "\$14,000."
  - c. The \$350,000 License Fee to be paid on or before June 30, 2017.
3. Installation. Section 5.1 is amended to make the following changes:
  - a. Change the reference of "January 1, 2017," to "January 01, 2018."
  - b. Change the reference of "June 30, 2017," to June 30, 2018"
4. Construction and Installation of the System. Section 5 of the Agreement is amended to add the following new Sections:
  - 5.5 Hazardous Materials. If Seller (or its contractors) discovers any such hazardous materials existing on the Premises during the construction and installation of the System

that Seller reasonably believes may require removal or remediation, or that otherwise impairs or prevents construction and installation of the System, Seller shall promptly notify Buyer in writing, and Seller shall, in its reasonable discretion, suspend construction of the System until such time as Buyer has removed the hazardous substance and remediated the Premises to Seller's reasonable satisfaction. Seller shall have no responsibility or liability in respect of hazardous material existing at the Premises (other than any hazardous materials brought to the Premises by or on behalf of Seller). If Seller and Buyer do not agree on a schedule and terms for resumption of construction within thirty (30) days following the discovery of such hazardous materials at the Site, then (a) Seller shall have the right to terminate this Agreement and (b) Buyer shall indemnify Seller for all liability, damages and reasonable expenses that Seller may incur as a result of such termination, including costs incurred in the engineering, procurement and construction of the System.

5.6 No Obstructions. Buyer shall not install or permit to be installed on the Premises (or any other property leased, owned or controlled by Buyer) any physical obstruction that has or could reasonably be expected by Seller to have the effect of materially reducing the production of Energy from the System.

5.7 Buyer Requested Relocation. Buyer may request Seller to relocate the System, and Seller will not unreasonably deny such request, provided, that (a) such relocation does not materially affect System performance and (b) Buyer reimburses Seller for all costs and expenses incurred by Seller in relocating the System (including costs of dismantling, storage, transportation, erection and testing). Buyer will also pay Seller for effects of lost System operation, e.g., lost Energy and environmental attribute production, during such Buyer-requested relocation.

5. License of Premises. Section 6.2 of the Agreement is amended in its entirety to read:

Pursuant to the terms and conditions of the PPA being entered into concurrently herewith, Buyer exclusively licenses to Seller that portion of the Buyer's Premises upon which the System is located (set forth on Exhibit C), and Buyer also grants a non-exclusive license to Seller (and its customers, guests, invitees, employees, agents and licensees) to use all easements, rights and privileges appurtenant to the Premises as necessary for Seller's installation, ownership, operation and maintenance of the System, including reasonable staging and laydown areas.

6. Invoicing and Payment. Section 10.1 of the Agreement is amended to add the following new sentence at the end of the section:

The Late Payment Interest Rate for purposes of this Agreement shall be [1.5] percent (18%) per annum (or such lower percentage if required by applicable law).

7. Indemnity; Limitations.

- a. Section 12.1 of the Agreement is amended to revise the phrase "Indemnity Claims, whether or not involving a third-party claim" to read: "claims by third

parties.” Section 12. 1 of the Agreement if further amended to revise the phrase “Indemnity Claims” in the proviso, to read: “claims by third parties.”

b. Section 12 of the Agreement is amended to add the following new sections:

12.2 Waiver of Consequential Damages. Except as expressly provided for herein (e.g., liability for liquidated damages), neither Party will be liable to the other Party for special, indirect or consequential damages arising out of the performance or non-performance of this Agreement, whether caused by negligence, tort, strict liability, breach of contract, or breach of warranty, including damages in the nature of lost profits or revenues, loss of use of facilities or equipment or inability to perform contracts with third parties (other than for any damages incurred under such contracts), other than for damages resulting from the claims of third parties.

12.3 Limitation of Liability. Except for indemnity obligations or claims arising out of Seller’s fraud, in no event will Seller’s liability to Buyer under this Agreement exceed \$997,422.00.

8. Assignment; Binding Effect. Section 17.1(c) is amended to add the following after “third party”: “so long as Buyer demonstrates to Seller the financial wherewithal of such third party purchaser, and the third party has assumed, as part of the purchase of Premises, all of Buyer’s obligations hereunder in writing.”
9. Exhibit A. Exhibit A of the Agreement is amended to add the description of the Solar Energy System set forth in Attachment 1 to this First Amendment.
10. Execution of First Amendment. In accordance with Section 18.3 of the Agreement, this First Amendment shall only be effective upon the execution by Seller and Buyer.
11. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
12. Entire Agreement. This First Amendment represents the entire understanding of Seller and Buyer as to those matters contained in this First Amendment, and supersedes and cancels any prior oral or written understanding, promises or representatives with respect to those matters covered in this First Amendment, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.
13. Full Force and Effect. Except as amended by this First Amendment, all other provisions of the Agreement remain in full force and effect. Any capitalized terms used herein, but not otherwise defined, shall have the meanings set forth in the Agreement. From and after the date of this First Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.
14. Severability. If any provision of this First Amendment shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or

*May 15, 2017*

render unenforceable any other provision of this First Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.

[Signature Page Follows]

*May 15, 2017*

IN WITNESS WHEREOF, Buyer and Seller have executed this First Amendment on the day and year first above written.

**BUYER:**

Humboldt Bay Harbor Recreation and Conservation District

By: \_\_\_\_\_

Name:

Title:

**SELLER:**

Renewable Energy Capital LLC

By: \_\_\_\_\_

Name:

Title:

*May 15, 2017*

Attachment 1  
Amendment to Exhibit A to the Agreement

Description of the Solar Energy System

The system is a 717.57kW DC attached rooftop mounted PV system at the Redwood Marine Terminal 2 site located at 364 Vance Avenue, Samoa, CA 95564. The PV system consists of 2,142 Canadian Solar CS6U-335M or equivalent 335W modules wired in 119 parallel strings of 18. The 119 strings will connect in parallel to 21 Solectria Renewables PVI-28TL or equivalent inverters located throughout the array. The system is estimated to produce 882.2 MWh annually. The output of the array will interconnect on the line side of a new 1000A main circuit breaker and operate in parallel with the utility grid.

AGREEMENT NUMBER <b>0CA16030</b>
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME  
 California Natural Resources Agency

CONTRACTOR'S NAME  
 Humboldt Bay Harbor, Recreation, and Conservation District

2. The term of this Agreement is: June 1, 2017 through April 30, 2018

3. The maximum amount of this Agreement is: \$ 200,000.00  
 Two hundred thousand dollars and no cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	5 page(s)
Exhibit B – Budget Detail and Payment Provisions	1 page(s)
Exhibit C* – General Terms and Conditions	GIA-610
Check mark one item below as Exhibit D:	
<input checked="" type="checkbox"/> Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	1 page(s)
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	page(s)

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at [www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx](http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx)

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

<b>CONTRACTOR</b>		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) Humboldt Bay Harbor, Recreation, and Conservation District		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Jack Crider, Executive Director		
ADDRESS 601 Startare Drive, P.O. Box 1030, Eureka, CA 95501		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME California Natural Resources Agency		
BY (Authorized Signature) 	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Patrick Kemp, Assistant Secretary for Finance and Administration		
ADDRESS 1416 Ninth Street, Suite 1311, Sacramento, CA 95814		
		<input checked="" type="checkbox"/> Exempt per: SCM4.04(5b)



## EXHIBIT A – SCOPE OF WORK

### Eureka Littoral Cell Coastal Regional Sediment Management Plan - Humboldt Bay Implementation Support

#### Introduction

The Eureka Littoral Cell extends from Trinidad Head to False Cape in northern California. The littoral cell includes seven watersheds and Humboldt Bay. In Humboldt Bay, the primary mechanism for sediment management is dredging. Shipping channels are dredged by the US Army Corps of Engineers. Smaller channels, docks and marinas are dredged by local and private entities. The draft Coastal Regional Sediment Management Plan for the Eureka Littoral Cell<sup>1</sup> (CRSM Plan) describes the following objectives for beneficial uses of dredged sediments from Humboldt Bay:

1. Reduce shoreline erosion and coastal storm damage;
2. Provide for environmental restoration and protection;
3. Increase natural sediment supply to the coast;
4. Restore and preserve beaches.

There are many opportunities to meet these objectives using dredged sediments from the bay. However, there are logistical and environmental challenges involved with moving sediments to the necessary locations at the correct times. The proposed project will help address these challenges for Humboldt Bay's locally managed dredge sites (i.e., smaller channels, docks and marinas that are outside of shipping channels).

There is not currently a comprehensive plan for dredging within Humboldt Bay's locally managed sites. Separate dredging plans are developed prior to each dredging event. During development of dredging plans, there is often controversy about locations to dewater, process and beneficially use sediments. This controversy is at least partially due to uncertainty and confusion regarding the environmental effects of dredging project alternatives. We propose to develop a Program Environmental Impact Report (PEIR) for dredging of locally maintained sites. The PEIR will guide implementation of the CRSM Plan for locally managed sites and steer sediment management towards achievement of the four objectives listed above. Because future regulatory documents will utilize or tier off information in the PEIR, the PEIR will also increase efficiency and predictability of future dredge permitting. The Humboldt Bay Harbor, Recreation and Conservation District (Harbor District) will be the lead California Environmental Quality Act (CEQA) agency for the PEIR. The scope of work, budget and schedule for developing the PEIR are described below.

Funding for the project is provided through a grant from the California Natural Resources Agency on behalf of the California Sediment Management Workgroup (CSMW). Staff from the CSMW and State Coastal Conservancy will participate in meetings and comment on draft documents to ensure the project is consistent with these entities' goals. Additionally, stakeholder input will inform PEIR development. Stakeholders that will be invited to participate include conservation advocacy groups (e.g., Humboldt Baykeeper and North Coast Environmental Center); local researchers; public and private dock and marina owners; Humboldt Bay area tribes; and fishing and shipping interests.

#### Proposed Scope of Work

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<sup>1</sup> Moffatt & Nicol. 2013. Draft Coastal Regional Sediment Management Plan: Eureka Littoral Cell, California. Prepared for the California Coastal Sediment Management Workgroup under contract to the U.S. Army Corps of Engineers.

## EXHIBIT A – SCOPE OF WORK

The PEIR will be written at a “program” not “project” level of detail. The document will contain enough detail so that it is beneficial for project implementation, including planning and permitting, but general enough to consider the broad range of scenarios that will be encountered.

### Task 1. Develop Project Description

The project description will describe a long-term program for dredging, pumping, dewatering, processing, stockpiling and beneficially using dredged sediments from locally maintained sites. Some beneficial use sites may be appropriate for direct pumping from dredge sites. For example, in north Humboldt Bay sediments have been pumped to Samoa Beach to increase sediment supply. Additionally, in south Humboldt Bay, the Salmon Creek Unit of the Humboldt Bay National Wildlife Refuge can receive dredged sediments to support habitat restoration. Other potential beneficial use sites are too far from dredge sites for direct pumping. For example, on the north shore of Humboldt Bay and in Mad River Slough, sediments could be used for habitat restoration and sea level rise protection, but pumping distances from dredge sites are too far. In these cases, and in circumstances when there is not a beneficial use immediately available, dewatering, processing and stock-piling sites are required. In north Humboldt Bay, Redwood Terminal 2, which is a former pulp mill site being repurposed by the Harbor District, is a potential location for this. Additionally, the sites known as the “Superbowl Site” and “LP Site” (or “Samoa Lagoons”) have been used for dewatering and stockpiling in the past and could be re-opened for use. Both of these sites are on the Samoa peninsula. In south Humboldt Bay, the Harbor District’s Fields Landing property has potential for sediment dewatering, processing and stockpiling. Another alternative that will be explored in the PEIR is to pump dredge material a quarter mile offshore or through the Harbor District’s one mile long ocean outfall pipe. To inform the project description, two meetings will be held with participating agency staff and stakeholders.

### *Deliverables*

- Summaries of key outcomes from two stakeholder meetings.
- Draft and final project description.

### Task 2. Environmental Analysis and PEIR Development

Development of a CEQA Initial Study is not proposed, because it has already been determined that a PEIR is the appropriate CEQA document. Development of the PEIR will involve the following steps:

1. Develop and distribute a Notice of Preparation for public comments.
2. Hold a public scoping meeting.
3. Develop the Draft PEIR, including analysis of all CEQA environmental categories.
4. Conduct consultation with Humboldt Bay area tribes.
5. File Notice of Completion and circulate Draft PEIR for public review.
6. Hold up to two public meetings to receive input on the Draft PEIR.
7. Prepare Final PEIR, Mitigation Monitoring and Reporting Program (MMRP) and response to comments.
8. Harbor District Commission considers PEIR for certification.
9. Prepare and file notice of determination with County Clerk.

## EXHIBIT A – SCOPE OF WORK

### *Deliverables*

- Notice of Preparation.
- Notes from public scoping meeting.
- Draft PEIR.
- Notice of Completion.
- Notes from up to two public meetings.
- Final PEIR with response to comments.
- MMRP.
- Notice of Determination.

### Task 3. Final Meeting

A final meeting will be held with entities conducting dredging in the bay and interested stakeholders. At this meeting, the final project description and environmental analysis will be reviewed and next steps for implementation will be identified.

### *Deliverables*

- Notes from final meeting including a discussion of next steps for implementation.

### **Budget and Schedule**

The Project's estimated costs are presented in Table 1. Project management costs and direct expenses are included in the cost estimates for each task. The estimated task and funding disbursement schedules are shown in Figure 1.

**Table 1. Estimated costs for development of the PEIR**

<b>Task</b>	<b>Estimated Cost</b>
1. Develop Project Description	\$50,000
2. Environmental Analysis and PEIR Development	\$145,000
3. Final Meeting	\$5,000
<b>Sub-Total</b>	<b>\$200,000</b>
Harbor District Support (Match) <sup>1</sup>	\$35,300
<b>Total Cost</b>	<b>\$235,300</b>

<sup>1</sup>The Harbor District is developing plans and regulatory approvals for dredging Humboldt Bay in 2017 and 2018. The information from this effort will inform the PEIR and the long-term dredging program. Additionally, as the CEQA lead agency, the Harbor District will participate in PEIR development. This will include drafting and reviewing PEIR text, participating in Project meetings, circulating the PEIR for public and agency review, and conducting Harbor District Commission hearings for PEIR approval. Time provided by agency staff and stakeholders participating in the project may also be included as part of the match.

EXHIBIT A – SCOPE OF WORK

Figure 1. Estimated project and disbursal schedule for development of the PEIR

	Months After Contract Execution																
	One	Two	Three	Four	Five	Six	Seven	Eight	Nine	Ten	Eleven	Twelve	Thirteen	Fourteen	Fifteen	Sixteen	
Task 1. Develop Project Description																	
- Stakeholder Meetings																	
- Draft Project Description																	
- Final Project Description																	
Task 2. Environmental Analysis and PEIR Development																	
- Notice of Preparation																	
- Scoping Meeting																	
- Draft PEIR																	
- Consultation with Tribes																	
- Draft PEIR Public Review																	
- Public Meetings																	
- Final PEIR, MMRP and Response to Comments																	
- Final PEIR Considered for Certification																	
- Notice of Determination																	
Task 3. Final Meeting																	
Approximate Disbursement	\$10,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$20,000	\$10,000	\$10,000	\$10,000	\$5,000	\$5,000	\$10,000	\$10,000	\$5,000	\$5,000

EXHIBIT A – SCOPE OF WORK

Table 2. Match budget

Staff	Organization	Title	Rate	Hours	Staff Costs	Travel Costs	Boat Use Fees	Total	Tasks
Chris Potter	Ca. Natural Resources Agency	Environmental Scientist	65.24	65	\$4,241	\$400	N/A	\$4,641	Manage grant, attend meetings and comment on draft documents.
Joel Gerwein	State Coastal Conservancy	Coastal Project Development Specialist	74.43	60	\$4,466	\$400	N/A	\$4,866	Attend meetings and comment on draft documents.
Jack Crider	Humboldt Bay Harbor District	Executive Director	104.28	60	\$6,257	n/a	N/A	\$6,257	Attend meetings; assist in document development; prepare staff reports for Commission review; attend commission meetings; dredging design.
Tim Petruscha	Humboldt Bay Harbor District	Harbor Operations Director	72.39	10	\$724	n/a	\$1,000	\$1,724	Operate Harbor District boat for two field visits. Help coordinate meetings.
George Williamson	Humboldt Bay Harbor District	Planner	108.00	173	\$18,684	n/a	N/A	\$18,684	Attend meetings; assist in document development; prepare staff reports for Commission review; attend commission meetings; dredging design.
Penny Hickey	Humboldt Bay Harbor District	Book Keeper	51.46	16	\$798	n/a	N/A	\$798	Budget management, progress reports, invoicing.
							Total	\$36,969	

## EXHIBIT D

### SPECIAL TERMS AND CONDITIONS

The following terms and conditions apply to Interagency Agreements.

#### A. CONTRACT PROVISIONS

1. Right to Terminate (SCM 7.85)

The State reserves the right to terminate this agreement subject to thirty (30) days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

In the event of termination, State shall pay contractor for all costs and uncancelable obligations incurred to the date of termination up to but not exceeding the maximum amount payable.

2. Completion of the Agreement

This agreement shall be complete on the ending date of this contract or expenditure of the maximum value of the contract, whichever occurs first.

## MASTER CONSULTING AGREEMENT

This Master Consulting Agreement (“Agreement”) dated this April 1, 2017 is between ICF Jones & Stokes, Inc. (“Consultant”), located at 630 K Street, Suite 400, Sacramento, California 95814 and Humboldt Bay Harbor, Recreation and Conservation District (“Client”), located at P.O. Box 1030 Eureka, California 95502-1030.

**WHEREAS**, Consultant is in the business of providing certain consulting services and is willing to provide such services to Client; and

**WHEREAS**, Client desires to utilize Consultant’s services as provided for herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

### 1. GENERAL TERMS AND CONDITIONS

1.1 The general terms and conditions of this Agreement are set forth in Appendix A, attached hereto and incorporated herein by reference.

### 2. SCOPE OF WORK

2.1 Consultant shall provide the services (“Services”) set forth in a work order (“Work Order”) requested by Client and accepted by Consultant. Work Orders may be agreed upon by the parties, subject to the terms of this Agreement. Consultant shall furnish all services, reports and deliverables as set forth in the Work Order in accordance with the terms set forth therein (“Deliverables”).

### 3. PERIOD OF PERFORMANCE

3.1 The period of performance for this Agreement shall be as set forth in the Work Order.

### 4. FEES AND PAYMENT

4.1 In consideration of Services performed hereunder, Client shall pay Consultant the fees set forth in Appendix B. Such fees shall be paid in accordance with the applicable invoice terms.

4.2 Should Client wish to dispute an invoice, it must do so in writing within ten (10) days of receipt. Otherwise, invoices shall be deemed accurate and payable according to the terms thereof.

### 5. ENTIRE AGREEMENT

5.1 Both parties acknowledge that they have read and understand this Agreement, Appendix A and B, and agree to be bound by those terms. Both parties further agree that this Agreement, Appendix A and B constitute the entire agreement between the parties hereto which supersedes all prior agreements, written or oral, relating to the subject matter hereof. No modification or waiver of any provision shall be binding unless in writing signed by the party against whom such modification or waiver is sought to be enforced.

[signatures on next page]

**IN WITNESS WHEREOF**, Client and Consultant have caused this Agreement to be executed by their duly authorized representatives.

**For: ICF Jones & Stokes, Inc.**

**For: Humboldt Bay Harbor, Recreation and Conservation District**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name (Typed or Printed) (Title)**

\_\_\_\_\_  
**Name (Typed or Printed) (Title)**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**



## APPENDIX A to the Master Consulting Agreement,

between ICF Jones & Stokes, Inc. ("Consultant") and Humboldt Bay Harbor, Recreation and Conservation District ("Client").

### GENERAL TERMS & CONDITIONS

1. **WARRANTY.** Consultant shall perform the Services, as defined in the Agreement, utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. **THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Specifically, Consultant makes no warranty or guarantee regarding the accuracy of any forecasts, estimates, or analyses.

2. **CLIENT'S RESPONSIBILITIES.** Client shall provide site access and Client data required by Consultant, and shall make timely electronic payments, within thirty days of invoice receipt. The fees for Services do not include local, state, or federal sales, use, excise, personal property, or other similar taxes or duties, and any such taxes or duties shall be assumed and paid by the Client.

3. **CONFIDENTIAL INFORMATION.** Proprietary or confidential information ("Confidential Information") developed or disclosed by either party under this Agreement shall be clearly labeled and identified as Confidential Information by the disclosing party at the time of disclosure.

Confidential Information shall not be disclosed by the receiving party to any other person except to those individuals who need access to such Confidential Information as needed to ensure proper performance of the Services.

Neither party shall be liable for disclosure or use of Confidential Information which: (1) was known by the receiving party at the time of disclosure due to circumstances unrelated to this Agreement; (2) is generally available to the public without breach of this Agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by applicable law or court order.

Each party shall return all Confidential Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. Each party shall have the right to retain a copy of the Confidential Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Section. This Section shall survive termination of this Agreement.

4. **LICENSE GRANT / DELIVERABLES.** Subject to Client's payment in full and to the terms of this Agreement, Consultant grants to Client a non-exclusive, non-

transferable, perpetual license to use the Deliverables for Client's internal business purposes only.

Client shall indemnify and hold Consultant harmless against any liability arising from or related to Deliverables that have been changed without Consultant's written approval or have been used for a purpose other than as defined hereunder.

5. **ACCEPTANCE.** Client shall have five (5) days to reject in writing all or part of each Deliverable if it is not in conformance with the warranty stated in Section 1 above. Each Deliverable, to the extent not rejected in writing by Client, shall be deemed accepted.

6. **EXCLUSIVE REMEDY.** For any Deliverable which is not accepted, Client's exclusive remedy, and Consultant's entire liability, shall be the re-performance of the Services, or if Consultant is unable to perform the Services as warranted, Client shall be entitled to recover the fees paid to Consultant for that portion of the Services which fail to conform to the warranty.

7. **FAILURE TO PAY.** In the event that payment has not been made in accordance with the terms of this Agreement, in addition to any other remedy which Consultant may have under law or equity, Consultant may stop work, and/or terminate this Agreement. Client shall indemnify Consultant for all reasonable cost, including actual attorney fees and related costs, necessary to obtain full and proper payment.

8. **CONTRACT CEILING PRICE.** If at any time Consultant has reason to believe that an increase in the expense ceiling will be necessary, it will give prior notice to that effect providing a written estimate to complete the Services and proposing a new limitation figure and giving appropriate supporting data so that Client may, at its sole discretion, increase such limitation by written modification to this Agreement.

Consultant shall not be required to perform the Services to the extent that such performance is limited by the expense ceiling of this Agreement. In the event of a dispute relating to the expense ceiling amount, such dispute shall be resolved in accordance with the Disputes clause of this Agreement.

9. **CURRENCY OF PAYMENT.** All payments shall be in United States Dollars (\$US).

10. **LIMITATIONS OF LIABILITY.** In no event shall Consultant be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under this Agreement, even if advised of the possibility of such damages. In no event shall Consultant's

**liability in connection with this Agreement exceed the amounts paid to Consultant hereunder.**

**11. INFRINGEMENT INDEMNITY.** Consultant will defend and indemnify Client against a claim that the Deliverable infringes a copyright or U.S. patent or other intellectual property right, provided that: (a) Client notifies Consultant in writing within 30 days of the claim; (b) Consultant has sole control of the defense and all related settlement negotiations; and (c) Client provides Consultant with the assistance, information and authority necessary to perform Consultant's obligations under this Section 11. Consultant shall have no liability for any claim of infringement based on use of a superseded or altered release of the Deliverable.

If the Deliverable is held or is believed by Consultant likely to infringe, Consultant shall have the option, at its expense, to (a) modify the Deliverable to be noninfringing; or (b) obtain for Client a license to continue using the Deliverable. If it is not commercially reasonable to perform either of the above options, then Consultant may terminate the license for the infringing Deliverable and refund the license fees paid for that Deliverable. This Section 11 states Consultant's entire liability and Client's exclusive remedy for infringement.

**12. TERMINATION.** Either party may terminate this Agreement by giving 10 calendar days written notice. Consultant shall be paid for Services provided up to the date of termination plus its unavoidable termination costs.

**13. CONFLICT OF INTEREST.** The Client acknowledges that the Consultant provides similar services for a broad range of other clients and agrees that Consultant shall be free to work for other clients in matters that do not involve the use of any Confidential Information that has been disclosed by the Client under the terms of this Agreement.

**14. FORCE MAJEURE.** Consultant is not liable for any delay in performance or non-performance caused by Acts of God, war, civil disturbance, government action, labor dispute, computer virus, pandemic illness, inadequate access to Client site or data, or anything else beyond Consultant's reasonable control.

**15. CHANGES TO THE SERVICES.** Changes in the scope of the Services, either by Client request or necessitated by other events or conditions (including, without limitation, changes in law or regulation), that would increase the cost or time needed to perform the Services shall be cause for an equitable increase in the Agreement price or ceiling, extension of the Agreement schedule, or both.

**16. DISPUTES.** Any dispute relating to this Agreement shall be submitted to a panel consisting of at least one representative of each party who shall have the authority to enter into an agreement to resolve the dispute. The panel shall meet for a maximum of three (3) days. Should this dispute resolution be unsuccessful, or if the panel has failed to meet within two (2) weeks of demand for such a meeting by either party, the matter may be submitted by either party to arbitration and no written or oral representation made during the course of any panel proceeding or other

settlement negotiations shall be deemed to be a party admission.

The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

**17. GENERAL PROVISIONS.** The Consultant is an independent contractor and shall not be deemed to be an employee or agent of the Client.

All terms of this Agreement are Confidential and subject to the requirements of Section 3 (above).

Neither party shall solicit for employment or hire the employees of the other party involved in the management or performance of the Services during the term of this Agreement and for one year thereafter. In the event a party breaches this obligation and hires one or more of the other party's employees, the breaching party shall pay to the non-breaching party, as liquidated damages, for each such employee, an amount equal to forty percent (40%) of the annual salary that will be paid by the breaching party.

No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.

If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.

Upon execution of this Agreement, Client grants ICF the right to announce its relationship with Client through a press release. ICF may also refer to Client in its publicity material as being a client of ICF.

Neither party may assign this Agreement without the written consent of the other party, which shall not unreasonably be withheld.

The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of California.

This Agreement may be executed in counterparts, and the counterparts, taken together, shall constitute the original.

In the event of a conflict in the terms and conditions of this transaction, the following order of precedence shall apply:

- A. The Consulting Agreement
- B. The General Terms and Conditions (Appendix A)
- C. Billing Rate Sheet (Appendix B)

[END OF APPENDIX A]