



**AGENDA**  
RIO DELL CITY COUNCIL  
CLOSED SESSION – 6:00 P.M.  
REGULAR MEETING – 6:30 P.M.  
TUESDAY, NOVEMBER 20, 2012  
CITY COUNCIL CHAMBERS  
675 WILDWOOD AVENUE, RIO DELL

*WELCOME . . . By your presence in the City Council Chambers, you are participating in the process of representative government. Copies of this agenda, staff reports and other material available to the City Council are available at the City Clerk's office in City Hall, 675 Wildwood Avenue. Your City Government welcomes your interest and hopes you will attend and participate in Rio Dell City Council meetings often.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (707) 764-3532. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to this meeting.*

**THE TYPE OF COUNCIL BUSINESS IS IDENTIFIED IMMEDIATELY AFTER EACH TITLE IN BOLD CAPITAL LETTERS**

- A. CALL TO ORDER
- B. ROLL CALL
- C. PLEDGE OF ALLEGIANCE
- D. ANNOUNCEMENT OF ITEMS TO BE DISCUSSED IN CLOSED SESSION AS FOLLOWS:
  - 1) 2012-2012/1120.01 - CONFERENCE WITH LEGAL COUNSEL - EXISTING  
LITIGATION: Pursuant to Government Code Section 54956.9(a)  
Name of Case: Steven and Sharon Wolff v. City of Rio Dell  
Humboldt Superior Court Case No. CV120162
- E. PUBLIC COMMENT REGARDING CLOSED SESSION
- F. RECESS INTO CLOSED SESSION
- G. RECONVENE INTO OPEN SESSION
- H. ORAL ANNOUNCEMENTS
- I. PUBLIC PRESENTATIONS

*This time is for persons who wish to address the Council on any matter not on this agenda and over which the Council has jurisdiction. As such, a dialogue with the Council or staff is not intended. Items requiring Council action not listed on this agenda may be placed on the next regular agenda for consideration if the Council directs, unless a finding is made by at least 2/3rds of the Council that the item came up after the agenda was posted and is of an urgency nature requiring immediate action. Please limit comments to a maximum of 3 minutes.*

## J. CONSENT CALENDAR

*The Consent Calendar adopting the printed recommended Council action will be enacted with one vote. The Mayor will first ask the staff, the public, and the Council members if there is anyone who wishes to address any matter on the Consent Calendar. The matters removed from the Consent Calendar will be considered individually in the next section, "SPECIAL CALL ITEMS".*

- 1) 2012/1120.02 - Approve Minutes of the November 8, 2012 Special Meeting  
**(ACTION)**
- 2) 2012/1120.03 - Approve Minutes of the November 8, 2012 Regular Meeting  
**(ACTION)**
- 3) 2012/1120.04 - Approve Resolution No. 1182-2012 Consenting to the Transfer of Control of the Cable Television Franchise in Connection with the Acquisition by Nespresso Acquisition Corp. of the Equity Interests of Cequel Communications Holdings, LLC, the Parent of Cebridge Acquisition L.P, DBA Suddenlink Communications Subject to Certain Conditions **(ACTION)**
- 4) 2012/1120.05 - Approve the 2012 Holiday Schedule for City Employees **(ACTION)**
- 5) 2012/1120.06 - Approve Modification of Employment Agreement with City Manager James R. Stretch **(ACTION)**
- 6) 2012/1120.07 - Digital Voice Recorders for Police Personnel **(RECEIVE & FILE)**

## K. SPECIAL PRESENTATIONS

## L. SPECIAL CALL ITEMS/COMMUNITY AFFAIRS

- 1) "SPECIAL CALL ITEMS" from Consent Calendar
- 2) 2012/1120.08 - Make the Finding that the Repair of the South Wall and the Ridge Beam at the North End of City, at the City of Rio Dell Police Department, Continues to Present an Emergency as set forth in Resolution No. 1178-2012 **(ACTION)**

- 3) 2012/1120.09 - Direct City Manager to Execute Contract Agreement with Bartle Wells Associates in the Amount of \$21,750 to Conduct a Wastewater Rate Study (**ACTION**)
- 4) 2012/1120.10 - Discuss Design Concept for Welcome Sign at Eagle Prairie Bridge and Provide Staff Direction (**ACTION**)
- 5) 2012/1120.11 - Discuss and Provide Direction to Staff on Addressing Various Improvements Needed at City Hall (**ACTION**)

I. ORDINANCES/SPECIAL RESOLUTIONS/PUBLIC HEARINGS

- 1) 2012/1120.12 - Approve Resolution No. 1183-2012 Approving Budget Amendment #5 for Repair of Painter St. Water Leak Within U.S. Highway 101 Right-of-Way (**ACTION**)

M. REPORTS/STAFF COMMUNICATIONS

1. City Manager
2. Chief of Police
3. Finance Director
4. Community Development Director

N. COUNCIL REPORTS/COMMUNICATIONS

O. STUDY SESSIONS/PUBLIC HEARINGS

P. ADJOURNMENT

*The next Regular meeting will be on December 4, 2012  
at 6:30 PM in City Hall Council Chambers*

**RIO DELL CITY COUNCIL  
SPECIAL MEETING  
NOVEMBER 8, 2012  
MINUTES**

A Special Meeting of the Rio Dell City Council was called to order at 9:00 a.m. by Mayor Pro Tem Marks.

ROLL CALL: Present: Mayor Pro Tem Marks, Councilmembers Leonard, Thompson and Wilson

Absent: Mayor Woodall

Others Present: City Manager Stretch and City Clerk Dunham

**SPECIAL MEETING MATTERS**

Make the Finding that the Repair of the South Wall and the Ridge Beam at the North End of City Hall, at the City of Rio Dell Police Department, Continues to Present an Emergency as set forth in Rio Dell Resolution No. 1178-2012

Motion was made by Leonard Wilson to make the finding that the repair of the south wall and ridge beam at the north end of City Hall at the City of Rio Dell Police Department, continues to present an emergency as set forth in Rio Dell Resolution No. 1178-2012.

Mayor Pro Tem Marks called for public comment on the proposed action; there was no public present to comment.

Motion carried 4-0.

**ADJOURNMENT**

There being no further business to discuss, the meeting adjourned at 9:03 a.m. to the November 8, 2012 regular meeting at 6:30 p.m.

\_\_\_\_\_  
Melissa Marks, Mayor Pro Tem

Attest:

\_\_\_\_\_  
Karen Dunham, City Clerk

**RIO DELL CITY COUNCIL  
REGULAR MEETING  
NOVEMBER 8, 2012  
MINUTES**

The Regular Meeting of the Rio Dell City Council was called to order at 6:30 p.m. by Mayor Pro Tem Marks.

**ROLL CALL:** Present: Mayor Pro Tem Marks, Councilmembers Leonard, and Wilson

Absent: Mayor Woodall and Councilmember Thompson (excused)

Others Present: City Manager Stretch, Finance Director Beauchaine, Wastewater Superintendent Chicora and City Clerk Dunham

Absent: Chief of Police Hill, Community Development Director Caldwell, and Water/Roadways Superintendent Jensen (excused)

**CEREMONIAL**

Swearing in of Billy J. Long to the Rio Dell Planning Commission for the Remainder of the Term Ending December 31, 2012

City Clerk Dunham swore in Billy J. Long to the Rio Dell Planning Commission to fill the unexpired term of Dave Gonzales ending December 31, 2012.

**PUBLIC PRESENTATIONS**

There were no public presentations at this time but due to a request from a citizen to speak at the end of the meeting, the public presentation portion was left open for further comment.

**CONSENT CALENDAR**

Councilmember Wilson requested that Item 3 *Approval of Change Order No. 3* be removed from the consent calendar for separate discussion; and Mayor Pro Tem Marks asked that Item 1 *Approval of Minutes of the October 16, 2012 Regular Meeting* be removed for separate discussion.

Mayor Pro Tem Marks referred to Page 7 of the October 16, 2012 minutes and said she spoke to Finance Director Beauchaine regarding the way line items are handled in the budget and asked her to clarify the policy.

Finance Director Beauchaine stated in regard to line items, the budget policy allows department heads to move money within the same fund up to \$5,000, and with City Manager approval up to \$10,000; anything beyond that accumulative requires City Council approval.

## NOVEMBER 8, 2012 MINUTES

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Mayor Pro Tem Marks said there was also a question asked by Councilmember Thompson regarding language in bid documents and asked if she was able to get clarification on the subject.

Finance Director Beauchaine said she did speak to legal counsel and the advice given was that language in the purchasing ordinance be kept as brief as possible to allow flexibility each time a separate bid document is crafted.

Mayor Pro Tem Marks said the question was whether or not contractors could be eliminated from the bidders list if they had filed a law suit against the City.

Finance Director Beauchaine said she did not get a response to that question specifically but that she would get further clarification and report back to the Council.

Councilmember Wilson stated in regard to the Change Order he just wanted to say that it was admirable that the contractor was able to find ways to decrease project costs by \$55,351.96 as reflected in the change order, stating that typically change orders increase project costs.

Motion was made by Leonard/Wilson to approve the consent calendar including approval of minutes of the October 16, 2012 regular meeting; approval of Pay Request No. 8 to Wahlund Construction/Sequoia Construction Specialties in the amount of \$495,192.54 for work related to the Wastewater Treatment Plant Upgrade and Disposal Project; and approval of Change Order No. 2 in the amount of -\$55,351.96 increasing contingency balance to \$214,301.82 on the Wastewater Treatment Plant Upgrade and Disposal Project. Motion carried 3-0.

### **SPECIAL PRESENTATIONS**

#### Wildwood Avenue Enhancement Project Update

City Manager Stretch provided a staff report and referred to the base bid and bid alternates listed in the order of priority. He said the order of alternates can be rearranged as the Council desires and pointed out that the estimate for the base bid and all of the bid alternates is currently about \$80,000 over construction budget so it is likely that some of the items will need to be eliminated. He further stated that the Council agreed to maintain a 10% contingency of \$53,000. He asked the Council to prioritize the list of bid alternates; once that is done; the package will be ready to be submitted to California Transportation Commission (CTC) at their January, 2013 meeting for consideration.

Councilmember Wilson stated he liked the priority of bid alternates but would like to see Alternate #7 *Art Pedestals* moved up to Alternate #5; Councilmember Leonard concurred.

Mayor Pro Tem Marks stated she would like Alternate #9 *Sidewalk and Driveway Repair* moved up to Alternate #5 after the *Welcome Sign (Alternate #4)*. She commented that the sidewalk repairs were important due to potential liability to the City.

Discussion continued regarding whether the responsibility for sidewalk repairs was the City's or the property owner.

City Manager Stretch explained that sidewalk maintenance is the responsibility of the property owner and once the City is aware of damage the City has the obligation to send out a "Notice to Repair" to the property owner. If the repairs are not completed within 30 days the City will make appropriate repairs and assess the property owner for all costs. He said if the existing sidewalk damages on Wildwood are repaired under the grant it will set a poor precedence. He said staff will make contact with the affected property owners where the damaged sidewalks are located.

Councilmember Marks felt *Street Furniture* was a lower priority and suggested it be moved from Alternate #6 to Alternate #8; Council concurred.

The bid alternates were re-prioritized with Council, City Manager and staff concurrence as follows:

- Alternate 1: Columbus St. to Douglas Street
- Alternate 2: Douglas Street to Elm Street
- Alternate 3: Elm Street to Side Street
- Alternate 4: Welcome Sign (w/electric)
- Alternate 5: Pedestals
- Alternate 6: Clock (w/pedestal and electric)
- Alternate 7: Tree Wells
- Alternate 8: Street Furniture
- Alternate 9: Sidewalk and Driveway Repair

Motion was made by Wilson/Leonard to direct that the Plans, Documents and Opinion of Probable Cost be submitted to the California Transportation Commission (CTC) for consideration at their January 2012 meeting. Motion carried 3-0.

City Manager Stretch stated that he met with Marion Brady and discussed a number of ideas in regard to the welcome sign and said he would be bringing back those ideas to the Council at a subsequent meeting. He presented a picture of a proposed sign modeled after the existing welcome sign at the north end of town.

Mayor Pro Tem Marks commented that the Eagle Prairie Arts District wanted to be involved in the design of the sign.

#### **SPECIAL CALL ITEMS/COMMUNITY AFFAIRS**

Direct City Manager to Execute Contract Agreement with Bartle Wells Associates in the Amount of \$21,750 to Conduct a Wastewater Rate Study

Councilmember Wilson recused himself from discussion of this item due to a potential conflict of interest; as such, the item was continued to the next regular meeting.

Approve Interim Animal Shelter Services with City of Fortuna

City Manager Stretch provided a staff report and stated at the October 2, 2012 regular meeting, Shannon Miranda of Miranda's Animal Rescue addressed the Council and advised the City that they would be adjusting their monthly rate from \$1,200 to \$2,500 due to the large number of dogs coming from Rio Dell, and the large portion of those dogs requiring spay and neuter services. He reported that the City of Rio Dell had brought 115 dogs to their facility last year however, according to the City's records only 38 dogs were transported to Miranda's in 2011.

City Manager Stretch said Chief of Police Hill, as administrator of the contract contacted Shannon Miranda to discuss the contract and received a fax from him stating that they will no longer be able to provide services to the City at the current rate and would in fact be increasing the monthly fee to \$2,500 as of November 1, 2012. Chief Hill's opinion was that based on the City's current budget, and the actual number of animals transported, it is not practical to consider paying the increased rate. His recommendation was to consider alternatives for the short term until a long term plan can be implemented. The short term solution is to enter into a temporary agreement with the City of Fortuna to accommodate the animals that are relinquished or captured at a rate of \$200.00 per animal to house the animals for ten days, which includes spay/neuter services when required. He said details are still being worked out with the City of Fortuna and once a draft agreement is prepared, staff will bring it back to the Council for consideration.

Motion was made by Leonard/Wilson to authorize the City Manager to enter into a temporary agreement with the City of Fortuna to house dogs that have been picked up or turned into the City of Rio Dell; with review of the agreement within six months and a report to the City Council regarding the agreement including costs to date, and numbers of animals housed.

Councilmember Wilson asked how many animals were taken in so far this year as compared to 2011, and said anything we can do to reduce costs will help.

City Manager Stretch said the City's existing animal shelter facility located at the City Corporation Yard may need to be upgraded to make it suitable to accommodate animals until they can be returned to their owners or transported. Also he said the police department will becoming more pro-active in regard to licensing of dogs thus increasing the ability to return dogs to their owners more consistently.

Sharon Wolff stated that Fortuna will charge \$200.00 per dog for 10 days and asked what happens to the dog after the 10 days. City Manager Stretch stated that those details are still being discussed but the idea is to release the animal to a shelter for possible adoption unless the animal is vicious.

Motion then carried 3-0.



Possible Election Results from November 6, 2012

City Manager Stretch reported the election results are still unofficial with some of the provisional ballots not counted but as it stands now the results of Measure J show 55% yes, and 45% no. He said since the Measure needs to pass by 66%, it appears that it will not pass.

**ORDINANCES/SPECIAL RESOLUTIONS**

Conduct Second Reading (by title only) and Approve Ordinance No. 295-2012 Establishing New Parking Regulations, Section 17.30.180 of the Rio Dell Municipal Code (RDMC)

City Manager Stretch stated the proposed ordinance was presented to the Planning Commission at their September 26, 2012 meeting and introduced at the October 16, 2012 regular City Council meeting. It is before the Council at this time for its second reading (by title only) and adoption.

A public hearing was opened at 7:02 p.m. to receive public comment on the proposed ordinance. There being no public comment, the public hearing closed.

Motion was made by Leonard/Wilson to conduct second reading (by title only) and approve Ordinance No. 295-2012 Establishing New Parking Regulations, Section 17.30.180 of the Rio Dell Municipal Code (RDMC). Motion carried 3-0.

Approve Resolution No. 1177-2012 and Conduct Second Reading (by title only) and approve Ordinance No. 297-2012 Amending the Town Center/Urban Residential Zoning Designations, the Allowed Uses and Development Standards of the Town Center Zone, the Edwards Suburban Low/Public Facility Zoning Designations

City Manager Stretch said the same applies for this ordinance.

A public hearing was opened at 7:04 p.m. to receive public comment on the proposed ordinance. There being no public comment, the public hearing closed.

Motion was made by Leonard/Wilson to approve Resolution No. 1177-2012 and conduct second reading (by title only) of Ordinance No. 297-2012 amending the Town Center/Urban Residential Zoning Designations, the Allowed Uses and Development Standards of the Town Center Zone, the Edwards Suburban Low/Public Facility Zoning Designations. Motion carried 3-0.

Conduct Second Reading (by title only) and approve Ordinance No. 298-2012 Repealing Ordinance No. 255-2008 and Establishing a Purchasing Procedure

Finance Director Beauchaine provided a staff report and said this ordinance is coming back to the Council for its second reading (by title only) and adoption.

A public hearing was opened at 7:07 p.m. to receive public comment on the proposed ordinance. There being no public comment, the public hearing closed.

Motion was made by Leonard/Wilson to conduct second reading (by title only) and approve Ordinance No. 298-2012 repealing Ordinance No. 255-2008 and Establishing a Purchasing Procedure. Motion carried 3-0.

Approve Resolution No. 1181-2012 Approving Wahlund Construction's Request for Sub-Contractor Substitution on the Wastewater Treatment Plant Upgrade and Disposal Project

Finance Director Beauchaine provided a staff report and said the City received a Subcontractor Substitution Request from Wahlund Construction requesting authority to self-perform the installation of the 14-inch water pipeline by horizontal directional drilling per Bid Item No. 3. She said the reason Wahlund is requesting substitution is because Solid Rock Construction, who is listed in the original bid, failed to execute a written contract for the scope of work specified in the subcontractor's bid, and failed to meet the schedule and submittal requirements for the project, and failed to start work on the project.

Finance Director Beauchaine said as of the time the staff report was prepared, no response was received from Solid Rock Construction objecting to the substitution.

Ken Wahlund addressed the Council and reviewed his reasons for requesting the sub-contractor substitution. He said his intent is to continue to work with Solid Rock to execute a limited scope contract on a time and materials basis which will allow assistance with the pipeline and drilling work and basically as much of the work in Bid Item 3 as possible. However, due to their failure to meet the schedule and submittal requirements of the project and begin work as scheduled, he is requesting authority for Wahlund Construction to proceed with the installation of the water pipeline and horizontal directional drilling as scheduled. He said because of the lack of response by Solid Rock, he re-certified everyone so at this point he sees no reason to involve Solid Rock with this portion of the project.

Councilmember Wilson asked if the work would have been done had Solid Rock submitted the proper paperwork; Ken Wahlund said the submittal process is a very important part of the process and impacts the ability of the contractors to work during dry weather. He said Solid Rock was only here once in the past 6 months and basically took them 7 months to reply with an unsigned contract.

Councilmember Leonard said it was his understanding that the pipeline will be run under the river; Ken Wahlund said it would be a nightmare for the public works crew if the pipeline was put through the bridge so they are proceeding with plans to bore under the river.

Mayor Pro Tem Marks said the staff report indicated that staff was in contact with legal counsel but it was unclear as to what legal advice was given. Finance Director Beauchaine said three

options were provided: 1) approve the Request for Subcontractor Substitution; 2) deny the request; or 3) continue the matter to a subsequent meeting.

City Manager Stretch stated staff's recommended action is predicated on advice from legal counsel.

R.J. from Solid Rock Construction responded to the request and said he first wanted to make it clear that he and Wahlund Construction have worked on several jobs together and they are not at odds with each other because of this. He said they agreed to contract with SHN Engineering to prepare the submittals as his staff is not qualified to prepare them. He said Solid Rock Construction has worked for Rio Dell in the past and installed 6 miles of water line on schedule and felt confident they could do the same with the wastewater project. He explained there were an issue with the contract amount and an issue with the union in the beginning. He said he did over-look an e-mail from Wahlund but felt that Solid Rock is the only company that has the experience necessary to get the job done. He said he would like to continue having a good working relationship with the City of Rio Dell as well as Wahlund Construction and would like the opportunity to work out the problems.

Richard Behrens, Construction Manager/Inspector stated the City has done its due diligence and in his opinion Wahlund Construction should be substituted in place of Solid Rock Construction for the pipeline installation and horizontal directional drilling to avoid any further delay with the project. He said this leaves negotiations open between Wahlund and Solid Rock in the event their assistance is needed further on in the project.

Mayor Pro Tem Marks asked if approval is given to run the pipeline under the river if Wahlund Construction will perform that work; Mr. Wahlund explained that work will require a different class of drillers and at that point, he will have to go out to two or three sub-contractors that have those qualifications to do that work.

Motion was made by Leonard/Wilson to approve Resolution No. 1181-2012 *Approving Wahlund Construction's Request for Subcontractor Substitution on the Wastewater Treatment Plant and Disposal Project.*

Councilmember Wilson commented that this project needs to get done and both of these guys are big boys. The last time the project was delayed was because of the bidding process and Wahlund stood by the City through the duration. He said Wahlund has the motivation needed to get the project done on schedule and in his opinion Solid Rock needs to be more prepared with the submittal process and learn how bureaucracy works.

Motion then carried 3-0.

## REPORTS/STAFF COMMUNICATIONS

City Manager Stretch reported on recent activities and said he met with Marion Brady and for very little money she will work on the design for the new welcome sign; the most expensive part will be on the actual construction and electrical for the sign. He also reported that interviews for the 2 utility worker positions will be held on November 19<sup>th</sup>; said he was working with the flooring contractors on containment of the asbestos flooring in City Hall and expected work to begin on or around December 7<sup>th</sup>; emergency repairs to the south wall of City Hall would be underway on November 13, 2012; the Chief was away attending POST Executive Leadership Training in the bay area; and said Community Development Director Caldwell was attending a Brownfield's Workshop and an Urban Development and Prop 84 Workshop also in the bay area.

Finance Director Beauchaine reported on recent activities in the finance department and said the auditors were scheduled to be here on December 11<sup>th</sup>; and said in regard to boring of the riverbed, we were still waiting for completion of the geo-technical report from SHN Engineering and hopefully will have it in time to have a special presentation at the next regular meeting.

## PUBLIC PRESENTATIONS (Continuation)

Deborah Bare asked if there are plans to construct a wall or plant trees at the new wastewater disposal site; City Manager Stretch explained the area in question is for irrigation purposes only and that grass has been planted.

Sylvia Jutila addressed the Council regarding November 15, 2012 as *Great American Smoke-out Day* and asked people to stop smoking for 1 day. She provided statistics and said tobacco kills 400,000 Americans each year. She provided a poster and Stop Smoking Kits for the public.

Nick Angeloff stated there was a recent radio interview with Rob Arkley on KINS Shop Talk where he indicated that he was going to fund the feasibility study for an east-west rail system that would **not** include Eureka and Arcata. After airing of the show, Mr. Arkley's staff said that he mis-spoke and his goal is to eventually see rail service from South Fork and Eureka. The feasibility study will determine which route is most viable.

Nick Angeloff then stated that he was leading up efforts to obtain grants to save the Scotia Gym from closure and said any help would be greatly appreciated.

## ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 7:56 p.m. to the December 4, 2012 regular meeting.

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**NOVEMBER 8, 2012 MINUTES**  
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Attest:

\_\_\_\_\_  
Melissa Marks, Mayor Pro Tem,

\_\_\_\_\_  
Karen Dunham, City Clerk

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*Rio Dell City hall  
675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532  
riodellcity.com*



November 20, 2012

TO: Honorable Mayor and City Council Members  
FROM: Jim Stretcher, City Manager  
SUBJECT: Suddenlink Cable System Transfer Agreement

RECOMMENDATION(S):

That the City Council:

1. Adopt Resolution No. 1182-2012 (Attachment 1) consenting to the transfer of control of the cable television franchise in connection with the acquisition by Nespresso Acquisition Corporation of the equity interests of Cequel Communications Holdings, LLC; and
2. Authorize the City Manager to sign the attached Transfer Agreement (Attachment 2) on behalf of the City.

SOURCE OF FUNDING: General Fund (Cable Franchise Fees-\$34,700)

DISCUSSION:

For many years, cable television services in the central part of Humboldt County have been provided by a single company which serves the cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna and Rio Dell and the adjacent unincorporated areas of the County. Each of the six cities and the County (for the unincorporated area) has provided this company with a franchise allowing the use of public rights-of-way. More than a decade ago, the incumbent provider (then known as CoxCom, Inc.) began the process of renewing these franchise agreements. In 2002, the City joined with the County and the other five cities to enter into an agreement with The Buske Group consultancy to review the language of the franchise agreements and align them for the benefit of the community and the service provider. This resulted in the adoption of a new cable television franchise ordinance by the City Council on February 3, 2004.

On March 21, 2006, the City Council approved a new franchise agreement with CoxCom, Inc. pursuant to this 2004 ordinance and also authorized the transfer of the agreement to Cebridge Acquisition, L.P. d/b/a Suddenlink ("Cebridge"), which has operated the cable system since that time. This franchise agreement runs through March 31, 2014, 2014. Cebridge is currently owned by Cequel Communications Holdings, LLC ("Cequel"). Today's action concerns the acquisition of Cequel by another firm, Nespresso Acquisition Corporation ("Nespresso").

On September 29, 2006, the State Legislature passed, and Governor Schwarzenegger signed into law, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA largely replaces the local issuance of cable television franchises with a system in which video franchises are issued by the California Public Utilities Commission. DIVCA did not abolish existing cable television franchises entered into prior to its adoption, and accordingly Cebridge still operates the Suddenlink system under the 2006 City franchise.

On July 28, 2012, the City was notified by Cebridge (Suddenlink) that the assets of its parent company, Cequel, were being acquired by Nespresso. Pursuant to Section 1.11.1 of the City's 2004 cable television franchise ordinance, the City must approve any transaction which will result in a transfer of control of the franchise operated by Cebridge. Under federal law, the City must act on a transfer application within 120 days.

On August 21, 2012, the Council approved a supplemental budget in the amount of \$5,000 that funded a contract with Access Humboldt. Access Humboldt in turn contracted with the Buske Group to review the transfer application. Buske Group has analyzed the financial, legal, and technical implications of the proposed change of control and negotiated and prepared the attached resolution, transfer agreement and guaranty, and Access Humboldt recommends that the City approve the resolution and authorize the City Manager to sign the transfer agreement on behalf of the City. The purpose of these documents is to protect the interests of the City (and ultimately the cable television ratepayers) in this transaction. Staff has reviewed the documents and concurs with Access Humboldt's recommendations.

#### FINANCIAL IMPACT:

The recommended action should result in no financial impact to the City. Cebridge will continue to operate the Suddenlink system under the terms of the existing franchise, including the payment of franchise fees to the City. Pursuant to City Code, Cebridge (Suddenlink) provided the City with a check for \$5,000 that was used to pay for the services of Access Humboldt and the Buske Group.

#### OTHER AGENCY INVOLVEMENT:

Access Humboldt  
Humboldt County and the Cities of Arcata, Blue Lake, Eureka, Ferndale and Fortuna

#### ALTERNATIVES TO STAFF RECOMMENDATIONS:

Unfortunately, the Council has very limited discretion in this matter pursuant to federal law. The Council could choose not to approve the attached resolution, but this would not prevent the transfer from being consummated and would likely result in litigation. Staff does not recommend this alternative, as it is believed that the attached documents place the City in the best position possible with respect to the remaining term of the franchise.

#### ATTACHMENTS:

1. Resolution No.1182-2012
2. Transfer Agreement
3. Guaranty

**CITY OF RIO DELL, CALIFORNIA (the "City")**

**RESOLUTION NO. 1182-2012**

**A RESOLUTION CONSENTING TO THE TRANSFER OF CONTROL OF THE CABLE TELEVISION FRANCHISE IN CONNECTION WITH THE ACQUISITION BY NESPRESSO ACQUISITION CORPORATION OF THE EQUITY INTERESTS OF CEQUEL COMMUNICATIONS HOLDINGS, LLC, THE PARENT OF CEBRIDGE ACQUISITION L.P., D/B/A SUDDENLINK COMMUNICATIONS, SUBJECT TO CERTAIN CONDITIONS**

**WHEREAS**, the provision of cable television service in the City is governed by Rio Dell City Ordinance 251-2004 ("Cable Ordinance") as it may have been amended from time to time; and

**WHEREAS**, Cebridge Acquisition L.P. d/b/a Suddenlink Communications ("Suddenlink") is the current holder of a franchise ("Franchise") to provide cable television service in portions of the City pursuant to Ordinance No.192, dated October 6, 1987, to operate the cable television system in the City (collectively, the "Franchise Documents"); and

**WHEREAS**, pursuant to the transaction (the "Proposed Transaction") described in a Purchase and Sale Agreement dated as of July 18, 2012 all of the outstanding equity interests of Cequel Communications Holdings, LLC ("Cequel") will be acquired by Nespresso Acquisition Corporation ("Nespresso"); and

**WHEREAS**, if consummated, the Proposed Transaction will result in a transfer of control of Cequel, the parent of Suddenlink, to Nespresso and consequently, a transfer of control of the Franchise; and

**WHEREAS**, Section 1.11.1 of the Cable Ordinance provide that prior approval of the City is required for any transaction which will result in a transfer of control of the Franchise; and

**WHEREAS**, Cequel and Nespresso have filed FCC Form 394 (the "Transfer Application") pursuant to the 1992 Cable Act and FCC regulations, and have requested that the City approve the Transfer Application for transfer of control of the Franchise in connection with the Proposed Transaction; and

**WHEREAS**, pursuant to Federal law, the City is required to act on the Transfer Application within 120 days of the City's receipt of a complete and accurate Transfer Application; and

**WHEREAS**, the City has reviewed the Transfer Application and other information provided by Cequel and Nespresso in response to requests from the City and examined the financial responsibility, technical expertise and legal qualifications of Nespresso in accordance with applicable laws and the Franchise Documents; and



**WHEREAS**, based on such review and examination, and in reliance upon the representations, documents, and information provided by Cequel and Nespresso in connection with the Transfer Application and supplemental information thereto, the City is willing to grant its consent to the transfer, subject to the willingness of Cequel and Cequel Communications, LLC to accept and agree to terms and conditions which the City believes are necessary to protect the public interest, and Cequel Communications, LLC to guaranty the performance of Suddenlink; and

**WHEREAS**, the City, Cequel and Cequel Communications, LLC have been negotiating such terms and conditions; and

**NOW, THEREFORE, BASED ON THESE PREMISES, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF RIO DELL THAT:**

Section 1. The Transfer Application and the transfer of control described therein is hereby approved as of November 20, 2012, subject to the following conditions:

A. Cequel and Cequel Communications, LLC must execute the Transfer Agreement in substantially the form attached hereto and deliver the executed copy of the Transfer Agreement to the City Clerk no later than 5:00 p.m. PST on March 31, 2013.

B. Cequel Communications, LLC must execute a Guaranty in substantially the form attached hereto and deliver the executed copy of the Guaranty to the City Clerk no later than 5:00 p.m. PST on March 31, 2013.

C. The Proposed Transaction must be consummated on or before March 31, 2013 and on terms that are not in any material respect different from those described in the Transfer Application and other related materials provided to the City.

Section 2. If the conditions set forth in Section 1 are satisfied, the Transfer Application and the transfer of control described therein shall be deemed approved effective immediately in accordance with applicable law. If such conditions are not satisfied, the City's consent to the Transfer Application will be deemed, by the terms of this Resolution, to have been denied as of March 31, 2013, without prejudice to any party to re-file for approval of the Proposed Transaction or a similar transaction.

Section 3. The City Manager is authorized to sign the Transfer Agreement.

---

PASSED AND ADOPTED by the City Council for the City of Rio Dell at a regular meeting of said Council, held on the 20th day of November, 2012, by the following vote of said Council:

AYES:

NOES:

ABSENT:

NOT VOTING:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

## TRANSFER AGREEMENT

This Transfer Agreement (the "Agreement") is made this 20th day of November 2012, by and between:

- 1.1.1. The City of Rio Dell, California, a Municipal Corporation ("City");
- 1.1.2. Cequel Communications Holdings, LLC ("Cequel");
- 1.1.3. Cebridge Acquisition L.P. d/b/a Suddenlink Communications ("Suddenlink");  
and
- 1.1.4. Cequel Communications, LLC. (formerly known as Cebridge III, LLC) , and  
together with Cequel and Suddenlink the "Companies".

### RECITALS

WHEREAS, Suddenlink currently operates a cable system located within the City under the terms and conditions of a cable franchise (the "Franchise") granted by the City pursuant to Resolution No.864-2004, and also under the terms of Rio Dell City Ordinance 251-2004, as these documents may have been and/or may in the future be lawfully amended from time to time in accordance within the parameters set forth in such documents (collectively "Franchise Documents") and applicable law; and

WHEREAS, pursuant to the transaction ("the Proposed Transaction") described in the Purchase and Sale Agreement dated as of July 18, 2012, Nespresso Acquisition Corporation ("Nespresso") will acquire all of the issued and outstanding equity interests of Cequel, the parent of Suddenlink;

WHEREAS, Suddenlink is a wholly-owned subsidiary of and controlled by Cequel Communications, LLC; and

WHEREAS, if consummated, the Proposed Transaction will result in a transfer of control of Cequel to Nespresso and consequently, a transfer of control of the Franchise (the "Transfer"); and

WHEREAS, the Franchise Documents provide that prior approval of the City is required for a transfer of control of the Franchise; and

WHEREAS, on or about July 27, 2012, Cequel and Nespresso filed with the City an FCC Form 394 (the "Transfer Application") pursuant to the 1992 Cable Act and FCC regulations, and have requested that the City approve the change of control proposed in the Transfer Application; and

WHEREAS, the Companies have agreed that, following the Transfer, Suddenlink will continue to be bound by and to comply with all of the commitments, duties and obligations under the Franchise Documents and all applicable federal, state and local laws, to the maximum extent required by law; and

WHEREAS, Cequel Communications, LLC has agreed to guaranty the performance of Suddenlink under the Franchise; and

NOW, THEREFORE, in consideration of the City's consent to the Transfer Application, and subject to the terms and conditions of this Agreement and of the City's Resolution granting consent to the Transfer Application, THE PARTIES DO HEREBY AGREE as follows:

**1. TRANSFER OF THE FRANCHISE**

1.1 The City's consent to the Transfer Application and the transfer of control of the Franchise in connection with the Proposed Transaction, through the adoption of the Transfer Resolution, in substantially the form attached hereto (the "Transfer Resolution"), is a condition precedent to this Transfer Agreement becoming effective. This Transfer Agreement will automatically become null and void if the Proposed Transaction is not consummated by March 31, 2013 or if the City Council does not consent to the Transfer Application and the transfer of control of the Franchise by adopting the Transfer Resolution.

**2. AFFIRMATION OF FRANCHISE OBLIGATIONS**

2.1 The Companies hereby accept, acknowledge and agree that, after consummation of the Proposed Transaction, Suddenlink will continue to be bound by all the commitments, duties, and obligations, past, present, continuing and future, embodied in the Franchise Documents, to the maximum extent required by law, and that neither the Transfer nor the City's approval of the Transfer Application will have any effect on these obligations.

2.2 The Companies agree that neither the Proposed Transaction nor the City's approval of the Transfer Application shall in any respect relieve the Companies of any responsibility any of them may have for past acts or omissions, known or unknown, including any liability for any and all previously accrued but unfulfilled obligations to the City under the Franchise Documents and applicable law, for all

purposes. Neither the Proposed Transaction nor this Transfer Agreement shall modify the rights of Suddenlink and/or the City under or related to the Franchise Documents as compared to those that could have been exercised by Suddenlink and/or the City prior to the Transfer. This Agreement shall have no bearing whatsoever on the rights of the City to ensure compliance by Suddenlink under the Franchise Documents, and the Companies shall not raise a claim to the contrary.

2.3 The City agrees that this Agreement is without prejudice to the Companies' rights to defend any claim of default or non-compliance with the Franchise Documents on the basis that such default or non-compliance has not occurred, or has been cured or from raising any other defense.

### **3. ADDITIONAL CONDITIONS**

3.1 In the event the Proposed Transaction described in the Transfer Application does not close by March 31, 2013 or closes on terms that are in any material respect different from the terms disclosed to the City in writing, then any City consent to the Transfer Application shall be void and of no force or effect, and the Transfer Application shall be deemed to have been timely denied.

3.2 The Companies hereby waive any and all claims that they may have that any denial of the Transfer Application that results from this Section 3 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 USC §537, as amended, and agree that they shall be deemed to have agreed to an extension of time to act on the Transfer Application as required to make any denial effective.

### **4. ADDITIONAL AGREEMENTS OF THE PARTIES**

4.1 The City reserves all rights not expressly granted in this Agreement. In particular and without limitation:

4.1.1 Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement, shall be construed to grant the City 's consent to any future transfer of the Franchise, and/or change in ownership and/or control of the Franchise, or to mean that the City 's consent to any such future transfer is not required.

4.1.2 The City 's consent to the Transfer Application shall not constitute a waiver or release of any of the City's rights with respect to Suddenlink's compliance (or non-compliance) with the terms, conditions, requirements and obligations set forth in the Franchise Documents. The City's

approval of the Transfer Application shall in no way be deemed a representation by the City that Suddenlink is in compliance with all of its obligations under the Franchise Documents.

4.1.3 The Companies shall not contend that the City is barred, by reason of its consent to the Transfer Application, from considering or raising any claim based on Suddenlink's past or present failure to comply with any term or condition of the Franchise Documents or applicable law, including, without limitation: any unpaid franchise fees lawfully due the City from Suddenlink, any known and unresolved consumer complaints, and any construction, security or facility requirements of the Franchise Documents that are unsatisfied.

4.1.4 Except as otherwise expressly provided for herein, this section is without prejudice to the Companies' rights to defend any claim of default or non-compliance with the Franchise Documents on the basis that such default or non-compliance did not occur, or has been cured, or from raising any other defense.

4.2 The Companies will comply with the privacy requirements of the Cable Act and other applicable state and federal laws, if any.

## **5. RATES**

5.1 The Companies further agree that the Transfer, the consent process, the City's Resolution granting consent, and this Transfer Agreement, standing on their own, do not provide any basis for increasing the amounts paid by subscribers through cost pass-throughs as so-called "external costs" or as new requirements and the consent process and ordinance granting consent do not, standing on their own, provide any basis for increasing the amounts paid by subscribers in any manner.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 The Companies acknowledge the City's representation that its consent to the Transfer Application is made in reliance upon the representations, documents, and information provided by the Companies in connection with the Transfer Application and supplemental information thereto, and the Companies are each severally responsible for any representations and warranties made by such Companies, respectively.

6.2 The Companies and the City represent and warrant that they understand that the Franchise is scheduled to expire on March 31, 2014 unless renewed or extended; that the Proposed Transaction is not based on any representation by the City (other than as provided by federal and state

law) that the Franchise will be renewed or extended; and that the Companies take all risks associated with any future non-renewal or non-extension of the Franchise.

6.3 The Companies represent and warrant that the Proposed Transaction will not in any respect adversely affect Suddenlink's ability to meet the lawful and valid requirements of the Franchise Documents.

6.4 The Companies agree they will not file a request under Section 625 of the Cable Act with the City seeking modification of any existing franchise requirements as a result of any increase in debt service, debt service coverage or equity requirements incurred to fund the Proposed Transaction.

6.5 The Companies acknowledge that the City did not undertake a compliance audit as a part of its processing of the Transfer Application and that there may be issues related to compliance that are not known to the City at this time. Pursuant to Section 2.1 of this Agreement, the Companies agree that Suddenlink shall be bound by all the commitments, duties, and obligations, past, present, continuing and future, of Suddenlink embodied in the Franchise Documents, to the maximum extent required by law and that the City's action to approve the Companies' Transfer Application shall in no way be interpreted as a waiver of the City's rights to enforce the Franchise Documents.

## **7. INDEMNIFICATION**

7.1 The Companies agree to indemnify and hold the City harmless against any loss, claim, damage liability or expense (including, without limitation, reasonable attorneys' fees) proximately caused by any representation or warranty made by the Companies herein which proves to be untrue or inaccurate in any material respect.

## **8. BREACHES**

8.1 Any breach of this Transfer Agreement shall be deemed a breach of the Franchise Documents.

## **9. MISCELLANEOUS PROVISIONS**

9.1 **Effective Date:** This Agreement shall be effective and binding upon the signatories upon closing of the Proposed Transaction.

9.2 **Entire Agreement:** This Agreement constitutes the entire agreement of the parties with respect to the matters addressed herein. No statements, promises or inducements inconsistent with this

Agreement made by any party shall be valid or binding, unless in writing and executed by all parties. This Agreement may only be modified by written amendments hereto signed by all parties.

9.3 Binding Acceptance: Any purported assignment of this Agreement is void without the express written consent of the signatories hereto. Subject to the foregoing, this Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

9.4 Voluntary Agreement: This Agreement is freely and voluntarily agreed to by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Agreement. Neither any of the Companies, nor any of their affiliates, nor the City, will take any action to challenge any provision of this Transfer Agreement; nor will they participate with any other person or entity in such action.

9.5 Drafting: This Agreement is a product of common negotiation among the parties and shall not be construed against any party on grounds relating to drafting, revision, review or recommendation by any agent or representative of such party.

9.6 Severability: If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder shall be valid in all other respects and continue to be effective.

9.7 Counterparts: This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterparts.

9.8 Governing Law: This Agreement shall be governed in all respects by the law of the State of California.

9.9 Captions and References: The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Transfer Agreement as of the day and year first above written.

APPROVED:

\_\_\_\_\_  
City of Rio Dell

ATTEST:

\_\_\_\_\_  
City Clerk

Cequel Communications Holdings, LLC

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

Cequel Communications, LLC

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

Cebridge Acquisition L.P. d/b/a Suddenlink  
Communications

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## GUARANTY

GUARANTY given by Cequel Communications, LLC (hereinafter "Guarantor") to the City of Rio Dell, California (hereinafter "City").

WHEREAS, Nespresso Acquisition Corporation is acquiring all of the issued and outstanding securities of Cequel Communications Holdings, LLC, the parent of Cequel Communications, LLC, which is the parent of Cebridge Acquisition, LP d/b/a Suddenlink Communications ("Suddenlink") which is a party to a franchise agreement with the City; and

WHEREAS, the City has requested that Guarantor provide a guaranty that Suddenlink will perform under the terms of the franchise agreement; and

WHEREAS, the Guarantor has agreed to enter into this Guaranty Agreement pursuant to the City's request.

NOW, THEREFORE, in consideration of the foregoing, the Guarantor agrees as follows:

1. Obligation. The Guarantor hereby guarantees the prompt and complete performance by Suddenlink of all the covenants, conditions, and terms of the City franchise. The Guarantor further guarantees the payment of all damages, judgments, costs and expenses, including fees that by virtue of the City franchise, or otherwise, might become recoverable by the City from Suddenlink.
2. Terms of Guaranty. This Guaranty shall be absolute, complete, continuing, and irrevocable, and the Guarantor shall not be released of its obligations hereunder so long as any claim of the City against Suddenlink arising out of the City franchise, or otherwise is not settled or discharged in full. The City shall notify Guarantor of any and all alleged breaches or defaults under the franchise agreement.
3. Waiver. The Guarantor hereby waives notice of the City's acceptance of this Guaranty. The Guarantor acknowledges that it is Guarantor's responsibility to be informed of the financial condition of Suddenlink, and the City has no duty to advise the Guarantor of any information known to it in that regard.
4. Liability or Default. All liability of the Guarantor to the City shall mature immediately, without notice or demand, upon the occurrence of any of the following acts or events by or with respect to Suddenlink: (a) dissolution; (b) insolvency or inability to meet obligations as they become due; (c) filing of a petition for relief in bankruptcy; (d) failure to pay any franchise fee, tax or assessment when due; (e) appointment of a trustee, custodian or receiver; (f) entry of any judgment, or issuance of an injunction or a warrant of attachment or execution.
5. Remedies. No right or power of the City hereunder shall be deemed to have been waived by any act or conduct on the part of the City, or by any neglect to exercise such right or power, or by any delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by the City.
6. Governing Law. This Guaranty shall be deemed to be made under and shall be governed by the laws of the State of California in all respects, including matters of construction,

validity and performance, and the terms and provisions hereof may not be waived, altered, modified or amended except in writing duly signed by an authorized representative of the City. By executing this Guaranty, Guarantor does not waive any rights under federal, state or local law.

7. Severability. If any of the provisions of this Guaranty shall contravene or be held invalid under the laws of any jurisdiction, this Guaranty shall be construed as if not containing those provisions and the rights and obligations of the parties hereto shall be construed and enforced accordingly.
8. Benefit. This Guaranty shall inure to the sole benefit of the City, its successors and shall be binding upon the Guarantors and their successors.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty as of \_\_\_\_\_.

\_\_\_\_\_  
Cequel Communications, LLC  
By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF \_\_\_\_\_ )

CITY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by the \_\_\_\_\_ of Cequel Communications, LLC.

\_\_\_\_\_  
Seal

\_\_\_\_\_  
Notary Public



**RIO DELL CITY COUNCIL  
STAFF REPORT  
NOVEMBER 20, 2012**

TO: Rio Dell City Council  
FROM: Karen Dunham, City Clerk  
THROUGH: Jim Stretch, City Manager  
DATE: November 20, 2012  
RE: Holiday Schedule

**RECOMMENDATION**

Approve the 2012 Holiday Schedule

**BACKGROUND AND DISCUSSION**

The following schedule reflects designated holidays for City employees. City Hall will be closed on the following dates as indicated:

- |                   |   |  |
|-------------------|---|--|
| Thanksgiving      | - | City Hall closed Thursday, November 22 – Friday, November 23 <sup>th</sup> (These are both designated paid holidays).              |
| Christmas Holiday | - | City Hall closed Monday, December 24 <sup>th</sup> – Tuesday, December 25 <sup>th</sup> (These are both designated paid holidays). |
| New Years         | - | City Hall closed Tuesday, January 1 <sup>st</sup> - New Years' Day   |

*Rio Dell City hall  
675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532  
riodellcity.com*



November 20, 2012

TO: Honorable Mayor and City Council Members  
FROM: Jim Stretch, City Manager  
SUBJECT: Modification of employment agreement with City Manager James R Stretch

IT IS REQUESTED THAT THE CITY COUNCIL:

1. Approve an amendment to the May 21, 2012 Employment Agreement of City Manager James R Stretch as follows:
  - a) Amend *Salary* Section 6 (A) of the agreement to provide that the annual salary for the full time position is \$50.23/hr) at step A. (No change, just stated as hourly rate).
  - b) Amend *Salary* Section 6 (B) of the agreement to provide that upon successful completion of one year's employment the annual salary for the full time position shall increase 4% to \$52.24/hr. at step B. (No change, just stated as hourly rate and mathematical error corrected in original agreement).
  - c) Amend *Hours of Work* Section 8 of the agreement to provide that the position was originally intended to be half-time (20 hours/week), but experience has shown that more than 20 hours/week is often required. When necessary, the City Manager is authorized to work the hours necessary for the effective conduct of City business. However, at no time will the City Manager be paid for work of more than 40 hours/week.
  - d) Amend *Automobile* Section 10 of the agreement from \$200/month (half-time) to \$300/month; assuming that the hours worked will be based on a  $\frac{3}{4}$  time position.
  - e) Amend *Vacation, Sick Leave, Holiday and Executive Time* Section 11 of the agreement to provide that the benefits earned are based on a  $\frac{3}{4}$  time position as follows:
    1. Vacation credit to be earned at 90 hours per fiscal year (7.5 hr. /month) and shall not be earned or accrued in excess of 90 hours.
    2. Sick leave credit to be earned at 6 hours/month
    3. Holiday pay shall be observed and paid the same as any other management employee of the City.
    4. Executive leave each fiscal year shall not exceed 7.5 working days per year and shall not accumulate more than 15 working days.
  - f) The effective date of the amendments is November 20, 2012.
  - g) Direct the City Attorney to prepare the necessary amendments to the agreement and authorize the Mayor to sign.

## BACKGROUND AND DISCUSSION

Prior to June 1, 2012, the City Manager in Rio Dell was considered to be a full time position and worked accordingly. After reorganization in 2011-12 the position was reassigned by the City Council to ½ time and James R Stretch was hired on those terms, effective June 1, 2012. After two months the Council increased the position to full time for the months of August and September 2012 and then back to ½ time on October 1, 2012 with the hope that the services of the City Manager would ease—it hasn't. Typically the demand of the position has been full time.

It is agreeable with the incumbent to increase the hours of work from 20 hours/week to something less than full time, most likely be in the range of ¾ time. The experience in the last almost 5 months is that the position is easily full time, but as you know it is not my desire at this time to work full time at anything, except perhaps hiking, travel and golf. The Council may want to consider hiring a full time City manager, and if you do I am willing to assist the City in that recruitment and would stay on until the new City Manager is hired.

Assuming that the City Council is agreeable to experimenting with a ¾ time effort, I have proposed amendments to the existing employment agreement to increase the hours worked / week to as much as 40 hours at the same hourly rate as the current agreement. Likewise, the automobile allowance and benefit structure are suggested to be adjusted for a ¾ time position.

## FISCAL IMPACT

None. Funds were earmarked in the 2012-13 final budget for a full time position just in case the ½ time position did not provide the level of administration the Council desired.

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675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532



To: Honorable Rio Dell City Council  
From: Graham Hill, Chief of Police  
Through: Jim Stretch, City Manager  
Date: November 20, 2012  
Subject: Digital Voice Recorders for Police Personnel

### **Council Action**

- Receive and File

### **Background**

Since 2005 the police department has utilized digital voice recorders to record contacts in the field and as well as interviews and interrogations. We established a dedicated database to store digital evidence in about 2008. A majority of contacts are captured on audio files; however there have been contacts that have not been captured because of how the recorders we currently use are configured. We have also determined that while our digital evidence is protected additional safeguards should be implemented to protect the integrity of that evidence, as well as implement features to allow us to more easily search for digital evidence. I have identified the need to upgrade our method of capturing information and researched different options. Some of the criteria I was looking for are:

1. The ability to connect a specific recording to a specific device to be able to establish the origin of the recording.
2. Ease of function so officers could reliably initiate recording under stressful circumstances in the field.
3. The ability store and manage data in such a way that allows for ease of retrieval and the ability to easily audit saved files.
4. A system to carry the device in such a way that it is secure on the officer and protected from being damaged or lost.
5. The ability to create multiple secure files on a single recorder to separate individual contacts from the field.

I looked at video cameras that are mounted on the officer. The video systems I looked at have the options we are looking for, but the costs for a complete system is in the neighborhood of \$6,000 to \$7,000, and requires the need to store lots of large digital files. While I do believe video will be the

industry standard in the near future, the cost is prohibitive at this time, and I believe the technology will continue to improve. Several agencies are using this technology successfully.

I researched audio recorders and found the **Puma 4 Law Enforcement** digital recording system. These devices are used by many agencies successfully and are designed specifically for law enforcement. It has the features we are looking for including file management software meant specifically for this type of data. The software's key features are the ability to add searchable criteria to the file such as names, dates, and case numbers; the ability to password protect access, as well as audit access and activity, and the ability create tiered access to the system for added security. Implementing this software allows us to protect the information we collect and establish that it is original content, consistent with industry standards for maintaining digital evidence.

The advantage of using an audio or video recording system is the ability to audit performance and very accurately document incidents officers respond to. The ability to address citizen complaints based on audio evidence or review interviews is invaluable. Software to properly manage this type of data is essential to maintain credibility and the integrity of the data.

### **Budgetary Impact**

The cost of the recording unit kits as well as the software can be absorbed within the current 2012-2013 budget and does not require an amendment. This purchase will have a total impact of \$4,273.33.

### **Recommendation**

Receive information.

### **Attachments**

- Proposal from VIP Inc. establishing the cost for the software and recording devices plus accessories.
- A copy of a current department policy regarding the use of audio recorders.





**Versatile Information Products, Inc.**  
 3630 Park Sierra Drive  
 Riverside, CA 92505  
 800 794-4044 ph  
 951 352-4593 fax

**PUMA-4 Digital Recorders and Management Software**

To: Rio Dell Police Department  
 Attn: Chief Graham Hill  
 Address: 675 Wildwood Avenue  
 Rio Dell, CA 95562  
 Phone: 707 764-5709  
 Email: [hill@riodellcity.com](mailto:hill@riodellcity.com)

Date: November 15, 2012  
 Estimate #: 121511-5P4

Model Number	H/w	Qty.	Description	List Price	Extended Price
PUMA-4	H/w	5	PUMA-4 Digital Audio Recorder Package for Law Enforcement Includes: Digital Recorder in Metal Casing Custom Leather Holster w/ Kydex insert (B/W) High Quality Lapel Microphone 2GB Internal Media 530 Hours Continues Record Time Software & USB Download Kit 5 Folders, Re-nameable Name or Officer ID Insertion E-mail Capabilities Noise Cancellation Modified Firmware Non-Editable Audio Files  <u>Optional Management Software and Transcription</u>	299.99	1,499.95
PUMA-MA-L	S/w	1	PUMA Lite Edition Management Application (Includes 2 x Administrator Licenses, 10 User Licenses)	1,995.00	1,995.00
PUMA-TL	S/w	0	PUMA Transcriptionists License	100.00	0.00
PAS5TK	H/w	0	Transcription Kit (Includes: Software, Foot pedal, Headset)	349.00	0.00
				<b>SUBTOTAL:</b>	<b>\$3,494.95</b>
				<b>TAX:</b>	<b>7.25%</b>
				<b>SHIPPING:</b>	<b>\$25.00</b>
		<b>Qty.</b>	<b>Contract &amp; Services</b>		
		1	Installation, Configuration, & Test (per day/remote)	500.00	\$500.00
		0	User Training (per day/remote)	500.00	\$0.00
		1	1-Year PUMA Manufacturers Warranty	0.00	\$0.00
		1	1-Year PUMA Service Contract (8-5, M-F)	0%	\$0.00
				<b>TOTAL:</b>	<b>\$4,273.33</b>

**\*VIP is the Sole Vendor for PUMA-4 & PUMA Management Application**

Validity of Quotation: 90 Days

Proposal must be signed by purchasing party, see page 3

Estimated Delivery: 2 - 4 weeks, contingent upon stock availability at time of order

**Joshua Shepard**  
**Account Manager**



10/14/2012

To whom it may concern,

Versatile Information Products is the sole source of the Olympus Puma 4 Police Special voice recorder.

If you have any questions please feel free to contact me.

Carmen Porto  
Olympus Imaging America Inc  
3500 Corporate Parkway  
Center Valley, Pa 18034  
Cell 818-314-8581  
Fax 818-790-2774  
[www.olympusamerica.com](http://www.olympusamerica.com)

**OLYMPUS AMERICA INC.**

TWO CORPORATE CENTER DRIVE, MELVILLE, NEW YORK 11747-3157  
TELEPHONE (631) 844-5000



# PUMA

A DIVISION OF VERSATILE INFORMATION PRODUCTS, INC.

DIGITAL RECORDERS AND SOFTWARE  
FOR LAW ENFORCEMENT

September 13, 2011

To Whom It May Concern:

Versatile Information Products, Inc. located at 3630 Park Sierra Drive in Riverside California is the Sole Developer, Distributor, and Support Line for the PUMA Management Software.

If you have any questions do not hesitate to contact me.

Thank you,

Joshua M. Shepard  
Account Manager  
Versatile Information Products, Inc.  
3630 Park Sierra Drive  
Riverside, CA 92505  
800 794-4044 x103  
951 352-4593 Fax  
909 664-3572 Cell  
[j.shepard@versatileinformation.com](mailto:j.shepard@versatileinformation.com)

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## Use of Audio Recorders

### 450.1 PURPOSE AND SCOPE

The Rio Dell Police Department has provided each of its sworn members with access to audio recorders for use while on-duty. These recorders are intended to assist officers in the performance of their duties by providing an unbiased audio record of a contact.

### 450.2 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed officer will be responsible for making sure that he/she is equipped with a departmentally issued audio recorder in good working order. Uniformed officers shall wear the recorder in an approved holder conspicuously mounted on their utility belt.

At the beginning of each shift, the officer shall record his/her name, serial number and the current date and time. At the conclusion of each shift, the officer shall record the ending date and time regardless of whether or not any activity was recorded during the shift.

Each officer shall be responsible for maintaining his/her own recordings until the media is either full or placed into evidence/safekeeping.

### 450.3 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to non-uniformed positions may carry a departmentally issued audio recorder at any time the officer believes that such a device may be beneficial to the situation.

At the beginning of any recording, the officer shall dictate his/her name, serial number and the current date and time. At the conclusion of the date or particular shift, the officer shall record the ending date and time.

Each officer shall be responsible for maintaining his/her own recordings until the media is either full or placed into evidence/safekeeping.

### 450.4 ACTIVATION OF THE AUDIO RECORDER

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
- (b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation.
  1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.

# Rio Dell Police Department

## Policy Manual

### *Use of Audio Recorders*

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2. For the purpose of this policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted audio recorder will have knowledge that such a contact is being recorded.
- (c) Members of the Department are encouraged to activate their recorders at any time that the officer reasonably believes that a recording of an on-duty contact with a member of the public may be of future benefit.
1. At no time should an officer jeopardize his/her safety in order to activate a recorder or change the recording media.
  2. Officers are prohibited from utilizing department recorders and recording media for personal use.

#### **450.5 RETENTION OF RECORDING MEDIA**

At any time that an officer records any portion of a contact which the officer reasonably believes constitutes evidence in a criminal case; the officer shall record the related case number and book the recording media into evidence or download the file in accordance with current procedure for storing digital files.

- (a) The officer shall further note in any related report that the recording has been placed into evidence.
- (b) Recording media placed into evidence shall be retained through the final disposition of the related criminal case.

#### **450.5.1 NON-CRIMINAL MATTER**

At any time that an officer reasonably believes that a recorded contact may be of benefit in a non-criminal matter (e.g., a hostile contact), the officer may book the recording media into safekeeping or download the file in accordance with current procedure for storing digital files.

- (a) Under such circumstances, the officer shall notify a supervisor of the existence of the recording as soon as practicable.
- (b) Recording media which have been placed into safekeeping shall be retained for a period of no less than 180 days or until the related matter has been closed (e.g., internal investigation, civil litigation).

Once any recording medium has been filled, the officer shall place it into safekeeping or download the file in accordance with current procedure for storing digital files where it shall be retained for a period of no less than 180 days unless utilized in a specific case.

#### **450.6 REVIEW OF RECORDED MEDIA FILES**

Recorded files may be reviewed in any of the following situations:

- (a) By a supervisor investigating a specific act of officer conduct
- (b) Upon approval by a supervisor, any member of the Department who is participating in an official investigation such as a personnel complaint, administrative investigation or criminal investigation
- (c) By the personnel who originally recorded the incident
- (d) Pursuant to lawful process or by court personnel otherwise authorized to review evidence in a related case
- (e) By media personnel with permission of the Chief of Police or authorized designee



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*Rio Dell City hall  
675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532  
riodellcity.com*

November 20, 2012

TO: Honorable Mayor and City Council Members

FROM: Jim Stretch, City Manager

SUBJECT: Report on declaration of emergency for reconstruction of south wall of City Hall and repair of the ridge beam on north side of City Hall

IT IS RECOMMENDED THAT THE CITY COUNCIL:

1. By 4/5 vote, make the finding required by California Contract Code Section 22050 that the repair of the south wall of City Hall, at the Police Department, and the ridge beam at the north end of City Hall continues to present an emergency as set forth in Rio Dell Resolution 1178-2012.

BACKGROUND AND DISCUSSION

On October 2, 2012 the City Council added an urgency item to the agenda concerning serious structural issues with the south wall of City Hall; the exterior wall of the Police Department (PD), and the end of the ridge beam on the north side of the building. The Council made the finding that the repairs presented an emergency that would not permit a delay resulting from a competitive solicitation of bids, due to the impending winter rain season. The City Manager was authorized to engage contractors to complete the repairs at the earliest opportunity, within the \$7,500 limit set by the Council.

The status of the project is that Julien Construction should have the south wall secured, siding replaced, sheet rock installed and windows installed by the end of the week (11-16-12). Added to the job while the wall was opened was some minor electrical wiring for an external outlet for a battery charger, vacuum cleaner, etc. and an outlet below the eve of the building for Christmas lights. The residential grade exterior door will be replaced with a steel door and jam for purposes of security and for a tight weather seal from rain driven storms from the south. The door and jam is a special order that will be received in about 2-3 weeks.

Repair of the ridge beam on the north side of City Hall will be undertaken after the wall repair is completed.

Even with these additions the repairs are believed to be within the Council's original \$7,500 expenditure limit.

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California Public Contract Code section 22050 provides that the legislative body shall review the emergency action taken at every regularly scheduled meeting to determine by at least 4/5 vote that the emergency continues.

Cc: Finance Director  
Chief Graham Hill

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675 Wildwood Avenue  
Rio Dell, CA 95562



TO: Mayor and Members of the City Council

THROUGH: Jim Stretch, City Manager

FROM: Stephanie Beauchaine, Finance Director

DATE: November 20, 2012

SUBJECT: Wastewater Rate Study RFP

### RECOMMENDATION

Direct the City Manager to execute a contract agreement with Bartle Wells Associates in the amount of \$21,750 to conduct a wastewater rate study.

### BUDGETARY IMPACT

To be funded by Wastewater Operating Reserves 5115-03-050. The current reserve balance is \$169,512.

### BACKGROUND AND DISCUSSION

The City is in receipt of four proposals submitted in response to the Wastewater Rate Study RFP issued in August. The following summarizes the proposals received:

Firm Name	Address	Partner/ Project Manager	Staff	Total Hours	Total Cost	Avg Cost Per Hour
GHD	Eureka	Rebecca Crow	5	280	\$32,635.00	\$116.55
SHN	Eureka	Greg Williston	3	115	\$12,000.00	\$104.35
Bartle Wells Associates	Berkley	Douglas Dove	2	124	\$21,750.00	\$175.40
NBS	San Francisco	Greg Clumpner	2	178	\$29,680.00	\$166.74

The City Manager, Finance Director, and Wastewater Superintendant have completed the review process. Each proposal was scored based on seven criteria listed in the RFP:



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availability of personnel, qualifications and expertise, technical soundness of proposed methodology, experience, quality of references, potential conflicts, and cost.

We unanimously recommend Bartle Wells Associates as the preferred firm to complete the Wastewater Rate Study. BWA is an independent financial advisor with 48 years of experience with local governments, specializes in utility rate and fee studies, financial plans and project financing. They have completed over 2,500 assignments in the western United States, including recent assignments for the City of Monterey, Garberville Sanitary District, East Bay Municipal Utility District, City of Ukiah and the Humboldt Bay MWD. Their references have been checked and are very strong. Though they are the second lowest bidder, staff recommends Bartell Well Associates for our wastewater rate study because of their extensive background and experience in the area of municipal utility rate structure and fee analysis.

The City is not obligated to select the lowest bidder, but California Government Code section 4526 does require that the award of the bid must be on the basis of demonstrated competence of the services required.

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November 20, 2012

TO: Honorable Mayor and City Council Members

FROM: Jim Stretch, City Manager

SUBJECT: Wildwood entry sign at Eagle Prairie Bridge

IT IS REQUESTED THAT THE CITY COUNCIL:

Discuss the attached design concept for the welcome sign at the Eagle Prairie Bridge and give staff direction on a concept and the authority to work with Marian Brady Design (\$500 max.) for concept development and rendering.

BACKGROUND AND DISCUSSION

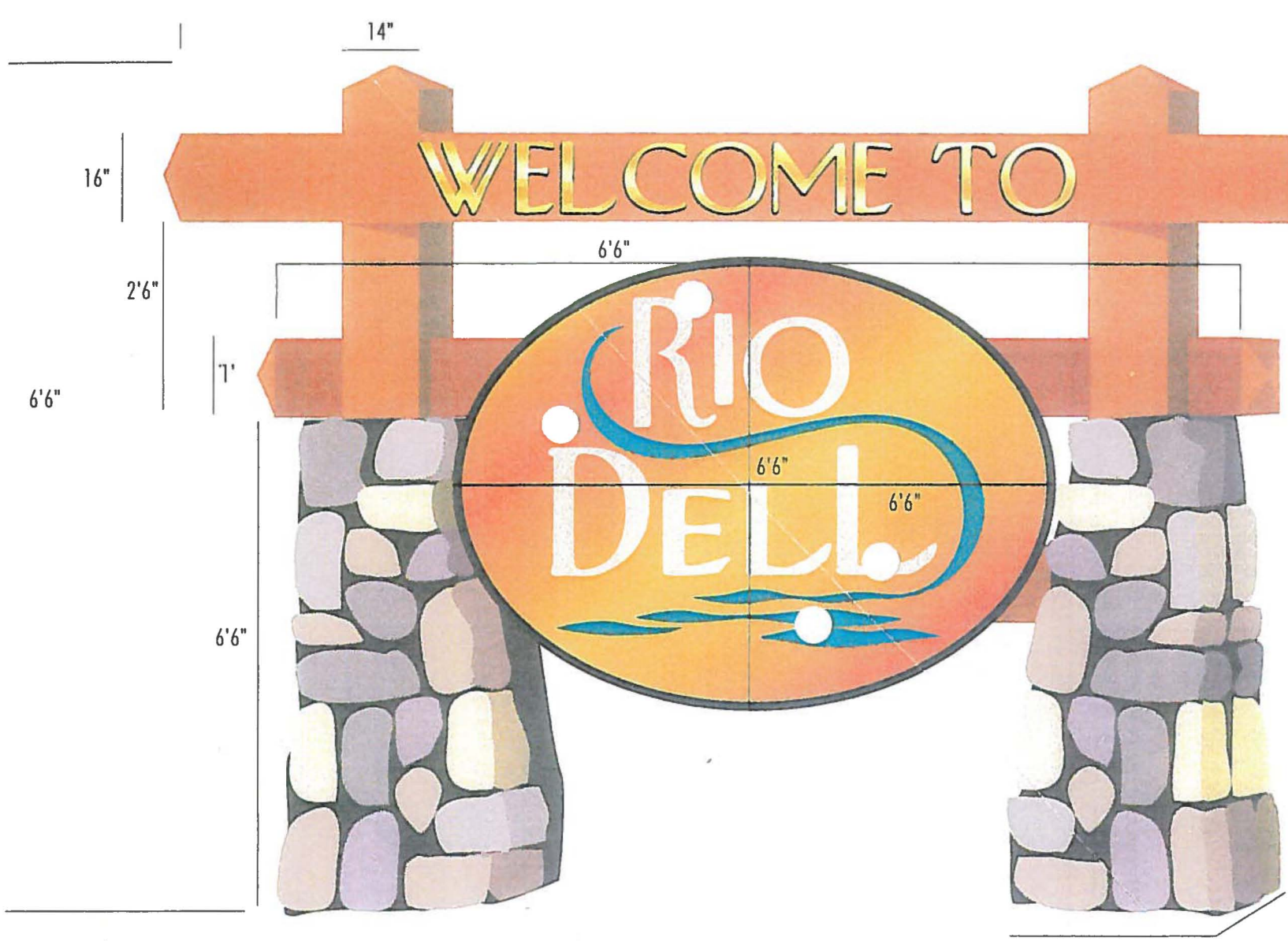
At the Council meeting of November 8, 2012 the discussion on the Wildwood Avenue Enhancement project was focused on the bid alternatives and feedback on the sign concept was so rushed that I am not certain that there was a meeting of the minds on a concept. Therefore, I have attached a sign concept again for discussion.

The attached sign is smaller, about ½ the size (3'x4") of the Wildwood Avenue sign. Both were designed by Marian Brady Design of Eureka back in 2004. The materials in the sketch are native stone and wood with gold lettering.

The scale of the sign on the back wall of the Council's chambers seems to fit the area at the intersection of Bridge Street and Wildwood Avenue. The attached sign design is smaller, but carries forward the theme from the north gateway sign. Another idea is to arrange rocks on the 13'x14' island (pile of rocks concept) with a lighted sign on the rocks

Marian estimated that her design work might be in the area of \$300-\$500. The adopted design is then engineered for construction. The total estimated cost in the plan advancing to the California Transportation Commission is \$16,000, including the extension of electrical power to the sign.

Staff is seeking a discussion and consensus direction from the Council on a concept.



mine 3302  
 yours:  
 dk green 330  
 clean 468 fontone  
 look  
 yours: 482  
 closest?  
 due 3155 myprint  
 yours: 315

scale: 1/2"=1'

square, pyramidal river rock bases with stained redwood beams as indicated. Oval sign can be aluminum clad and painted. Incised lettering filled with gold leaf.

Sign Design:  
 Marian Brady, Graphic Design  
 803 Pine Street, Eureka, CA. 95501  
 707-443-8282

Contact Allpoints  
 442-7781  
 for blended sign  
 and  
 Welcome lettering

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November 20, 2012

TO: Honorable Mayor and City Council Members

FROM: Jim Stretch, City Manager

SUBJECT: City Hall Improvement Projects

IT IS REQUESTED THAT THE CITY COUNCIL:

Discuss and give direction to staff on addressing the various improvements needed at City Hall.

BACKGROUND AND DISCUSSION

Due to time constraints I am unable to fully develop this topic in written form, but do not want to have a discussion with the Council about known deficiencies at City Hall before the next meeting on December 4, 2012.

On September 18, 2012 the second status report on the development of a 5 year capital Improvement Plan was prepared and presented to the Council. It remains work in progress. But in that report were several improvements to City Hall, much like the repair of the police department's south wall and the rotten ridge beam on the north side of the building. It is those maintenance items and associated improvements that I seek direction from the Council at this time.

Here are the items:

	<u>Est. \$ cost</u>
1. Replacement of City Hall roof, gutters, downspouts and exhaust fans	\$ 30,000
2. Upgrade electrical in City Hall	5,500
3. Replace 16 broken and failed windows	6,700
4. Install sprinkler system for City Hall lot and Memorial Park	?
5. Replacement of ADA ramp, front steps, 2 front doors and expand Parking lot.	?
6. City Hall external improvements	
• Entry roof over new front stairs	?
• Access stairway from back parking lot to City Hall (CH)	?
• Covered employee area in back of CH	?
• ADA back door to CH	?
• Covered parking for 2 police vehicles	?

- Backup generator for City Hall

?

### NOTES ON THE ABOVE 6 TOPICS

- #1-The Council tentatively approved \$35,000 for the reroofing of City Hall, but if external improvements are to be undertaken for covered entrances, that reroofing project should wait and be done all of the same time.
- #2-The electrical upgrade will eliminate numerous extension cords and increase the electrical capacity of the building.
- #3-All 16 of the broken or failed windows defeat the insulating effect that dual pane windows provide.
- #4-The installation of sprinkler systems at both Memorial Park and the City Hall property release manpower during the summer months from moving sprinklers every few hours. There are more important jobs to do.
- #5-The current ADA ramp does not meet the ADA standards and needs to be replaced. It extends 8-1/2' out from the building and the new ramp will extend 12' out. That fact pushes the parking lot toward Wildwood Avenue. The front doors at the police department and city office entrances are not ADA and need to be replaced. Moving the front door out toward the street will also expand the public's entry space at the front counter. The front steps will also be moved out from the building. \$3,500 was discussed during budget hearing for this project, but this is no minor project and it requires both architectural design and engineering.
- #6-If there was a better access from the back parking lot to City Hall, city staff would park there and the parking spaces in the front of the building could be used exclusively by the public. There needs to be a stairway down from the parking lot and an ADA entrance created at the back of the building. A covered employee area by the back stairway would be greatly appreciated, as there really is no break area in the building for them. A carport structure at the PD would keep officers out of the weather and would shield much of the south wall and employee entrance from blowing rain. The PD parking lot needs to move south. A backup generator would allow the police department to maintain communications with dispatch during power outages and allow the public's business to continue at City Hall.

Items #5 and #6 will require architectural and engineering services. If the Council supports the improvement concepts, #1 would be folded in to that project. Staff is looking for Council's direction to engage an Architect to develop plans and specifications for the improvements.

Funding for all items above could be available in the General Fund Reserve.

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**675 Wildwood Avenue  
Rio Dell, CA 95562  
(707) 764-3532**



**Mayor & Council:**

**Agenda Item: 2012/1120.10**

**The staff report for this item is being prepared and will be available on Monday.**

**Thanks!**

**Karen**

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