

**CITY OF CLOVERDALE  
CITY COUNCIL**

**RESOLUTION NO. 016–2020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING THE COMMON INTEREST AGREEMENT WITH THE MENDOCINO COUNTY INLAND WATER AND POWER COMMISSION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

**WHEREAS**, Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, Round Valley Indian Tribes, County of Humboldt, California Trout, and Trout Unlimited. The parties to this Agreement are referred to in the singular as “Party” and collectively as “Parties” have entered into a common interest Agreement; and

**WHEREAS**, the Parties are participating in the re-licensing proceeding for Pacific Gas and Electric Company’s Potter Valley Project (“Project”), currently pending before the Federal Energy Regulatory Commission (“FERC”). Under the current license, the Project discharges flows into the Russian River Basin. These flows: provide reliable water supplies for agricultural and municipal uses in Mendocino and Sonoma Counties; generate power for the City of Ukiah upon release from Lake Mendocino; contribute to recreational uses of Lake Mendocino; and allow Sonoma Water to meet the minimum instream-flow requirements established by the State Water Resource Control Board’s Decision 1610. In the pending proceeding for the Project, FERC will consider various alternatives ranging from relicensing the present Project to decommissioning the Project, taking into account the Project’s impacts in the Eel and Russian River Basins. The Parties anticipate that judicial review of FERC’s final decision in the re-licensing proceeding and related regulatory decisions is highly likely. As a result, counsel for the Parties recommend that the Parties undertake discussions to explore options and potential terms of an agreement that, if reached, would resolve disputed issues and reduce the risks that the Project would be relicensed or decommissioned under terms that would conflict with the Parties’ respective interests and obligations in the Russian River Basin. These discussions among the Parties may include sensitive information for which disclosure beyond that required by law may hamper the development of the above-mentioned agreements; and

**WHEREAS**, as currently constructed and operated, the Project discharges flows from the Eel River Basin into the Russian River Basin. In light of potential conflict among various stakeholders in both the Eel River and Russian River Basins, and the likelihood of litigation over FERC’s final decision in the relicensing proceeding for the Project, the Parties desire to undertake discussions to explore options that satisfy the needs of both Basins. These discussions will aim to resolve disputed issues and reach an agreement regarding the future of the Project that reflects the interests of both the Eel and Russian River Basins and would thus represent a “Two-Basin Solution.” These discussions among the Parties may include sensitive information for which disclosure beyond that required by law may hamper the development of the above-mentioned Two-Basin Solution; and

**WHEREAS**, it is necessary for the Parties to share information to work to develop an agreement; and

**WHEREAS**, the Parties therefore wish to set forth in this Agreement the terms and parameters under which information and materials necessary to carry out the Parties’ activities described in the Recitals will be shared by the Parties; and

**WHEREAS**, the original Confidentiality and Common Interest Defense Agreement was entered into between Sonoma County Water Agency and the Mendocino County Inland Water and Power Commission on January 2, 2019; and

**WHEREAS**, on April 25, 2019, the original Confidentiality and Common Interest Defense Agreement was amended to add California Trout as a party, and to add a supplemental recital (“First Amended Confidentiality and Common Interest Agreement”); and

**WHEREAS**, on May 15, 2019, the First Amended Confidentiality and Common Interest Defense Agreement was amended to add Trout Unlimited as a party (“Second Amended Confidentiality and Common Interest Agreement”); and

**WHEREAS**, on May 17, 2019, the Second Amended Confidentiality and Common Interest Defense Agreement was amended to add Round Valley Indian Tribes as a party (“Third Amended Confidentiality and Common Interest Agreement”); and

**WHEREAS**, on June 16, 2019, the Third Amended Confidentiality and Common Interest Defense Agreement was amended to add the County of Humboldt as a party (“Fourth Amended Confidentiality and Common Interest Agreement”); and

**WHEREAS**, the Parties desire to amend and restate the Fourth Amended Confidentiality and Common Interest Defense Agreement to allow information and materials necessary to carry out the Parties’ activities described in the Recitals to be shared with other parties participating in the FERC relicensing of the Project who are willing to abide and be bound by the terms of this Agreement; and

**WHEREAS**, the Parties desire for this Amended and Restated Confidentiality and Common Interest Defense Agreement to amend, restate and replace the original Confidentiality and Common Interest Defense Agreement and all four amendments thereto in their entirety; and

**WHEREAS**, by entering into the agreement, the Parties agree to exchange Confidential Information as necessary to further fulfillment of their joint interests and obligations, a matter of common interest to all Parties; and

**WHEREAS**, the Parties further affirm that disclosure among the Parties subject to this Agreement of such Confidential Information is essential to protecting the Parties’ common interests concerning their activities and that the Parties intend that the common interest doctrine govern the communication of confidential information and materials under this Agreement; and

**WHEREAS**, any shared Confidential Information is intended, in part, to advance the Parties’ shared interests in securing legal advice on the common matter related to their efforts to prosecute or defend against claims or defenses raised in any legal, judicial, regulatory, administrative, or legislative action or activity.

**NOW, THEREFORE, BE IT RESOLVED** that the Council finds and declares all of the following:

1. The Council finds that the City will benefit from participation with the parties in the Common Interest Agreement.
2. The Council approves the Common Interest Agreement with the Mendocino County Inland Water and Power Commission and other parties.

3. The Council authorizes the City Manger to execute Exhibit A to the Common Interest Agreement on behalf of the City of Cloverdale.


The foregoing Resolution No. 016-2020 was duly introduced and adopted by the City Council of the City of Cloverdale at its regular meeting held on the 12<sup>nd</sup> day of February 2020 by the following roll call vote:

**AYES: (5) Councilmembers Bagby, Brigham and Cruz, Vice Mayor Turner and Mayor Wolter**  
**NOES: (0) None**  
**ABSTAIN: (0) None**  
**ABSENT: (0) None**

**APPROVED:**

  
Gus Wolter, Mayor

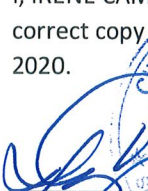
**ATTEST:**

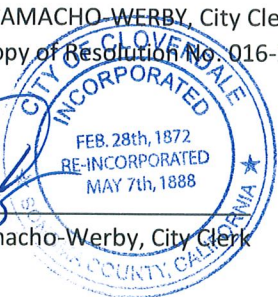
  
Irene Camacho-Werby, City Clerk

Attachment:

Exhibit A - Common Interest Agreement

I, IRENE CAMACHO-WERBY, City Clerk of the City of Cloverdale, do hereby certify that the foregoing is a full, true, and correct copy of Resolution No. 016-2020 adopted by the City Council of the City of Cloverdale on the 12th day of February 2020.

  
Irene Camacho-Werby, City Clerk



**AMENDED AND RESTATED CONFIDENTIALITY AND COMMON INTEREST  
DEFENSE AGREEMENT**

This Amended and Restated Confidentiality and Common Interest Defense Agreement (“Agreement”) is hereby entered into and effective this 1<sup>st</sup> day of January 2020 by and between Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, Round Valley Indian Tribes, County of Humboldt, California Trout, and Trout Unlimited. The parties to this Agreement are referred to in the singular as “Party” and collectively as “Parties”.

**RECITALS**

- A. WHEREAS, the Parties are participating in the re-licensing proceeding for Pacific Gas and Electric Company’s Potter Valley Project (“Project”), currently pending before the Federal Energy Regulatory Commission (“FERC”). Under the current license, the Project discharges flows into the Russian River Basin. These flows: provide reliable water supplies for agricultural and municipal uses in Mendocino and Sonoma Counties; generate power for the City of Ukiah upon release from Lake Mendocino; contribute to recreational uses of Lake Mendocino; and allow Sonoma Water to meet the minimum instream-flow requirements established by the State Water Resource Control Board’s Decision 1610. In the pending proceeding for the Project, FERC will consider various alternatives ranging from relicensing the present Project to decommissioning the Project, taking into account the Project’s impacts in the Eel and Russian River Basins. The Parties anticipate that judicial review of FERC’s final decision in the re-licensing proceeding and related regulatory decisions is highly likely. As a result, counsel for the Parties recommend that the Parties undertake discussions to explore options and potential terms of an agreement that, if reached, would resolve disputed issues and reduce the risks that the Project would be relicensed or decommissioned under terms that would conflict with the Parties’ respective interests and obligations in the Russian River Basin. These discussions among the Parties may include sensitive information for which disclosure beyond that required by law may hamper the development of the above-mentioned agreements;
- B. WHEREAS, as currently constructed and operated, the Project discharges flows from the Eel River Basin into the Russian River Basin. In light of potential conflict among various stakeholders in both the Eel River and Russian River Basins, and the likelihood of litigation over FERC’s final decision in the relicensing proceeding for the Project, the Parties desire to undertake discussions to explore options that satisfy the needs of both Basins. These discussions will aim to resolve disputed issues and reach an agreement regarding the future of the Project that reflects the interests of both the Eel and Russian River Basins and would thus represent a “Two-Basin Solution.” These discussions among the Parties may include sensitive information

for which disclosure beyond that required by law may hamper the development of the above-mentioned Two-Basin Solution;

- C. WHEREAS, it is necessary for the Parties to share information to work to develop an agreement;
- D. WHEREAS, the Parties therefore wish to set forth in this Agreement the terms and parameters under which information and materials necessary to carry out the Parties' activities described in the Recitals will be shared by the Parties;
- E. WHEREAS, the original Confidentiality and Common Interest Defense Agreement was entered into between Sonoma County Water Agency and the Mendocino County Inland Water and Power Commission on January 2, 2019;
- F. WHEREAS, on April 25, 2019, the original Confidentiality and Common Interest Defense Agreement was amended to add California Trout as a party, and to add a supplemental recital ("First Amended Confidentiality and Common Interest Agreement");
- G. WHEREAS, on May 15, 2019, the First Amended Confidentiality and Common Interest Defense Agreement was amended to add Trout Unlimited as a party ("Second Amended Confidentiality and Common Interest Agreement");
- H. WHEREAS, on May 17, 2019, the Second Amended Confidentiality and Common Interest Defense Agreement was amended to add Round Valley Indian Tribes as a party ("Third Amended Confidentiality and Common Interest Agreement");
- I. WHEREAS, on June 16, 2019, the Third Amended Confidentiality and Common Interest Defense Agreement was amended to add the County of Humboldt as a party ("Fourth Amended Confidentiality and Common Interest Agreement"); and
- J. WHEREAS, the Parties desire to amend and restate the Fourth Amended Confidentiality and Common Interest Defense Agreement to allow information and materials necessary to carry out the Parties' activities described in the Recitals to be shared with other parties participating in the FERC relicensing of the Project who are willing to abide and be bound by the terms of this Agreement; and
- K. WHEREAS, the Parties desire for this Amended and Restated Confidentiality and Common Interest Defense Agreement to amend, restate and replace the original Confidentiality and Common Interest Defense Agreement and all four amendments thereto in their entirety.

## TERMS OF AGREEMENT

THEREFORE, the Parties agree as follows:

1. The Recitals stated above are true and correct.
2. For purposes of this Agreement, "Confidential Information" means information and communications for the Parties' activities described in Recitals A and B that are restricted, prohibited or privileged from disclosure by state or federal law and that will be developed and shared as part of a common effort to prosecute or defend against claims in active or pending litigation and related regulatory, administrative and legislative proceedings. Confidential Information also includes, but is not limited to, information exempt from disclosure under the California Public Records Act (Government Code sections 6250 *et seq.*) and information privileged from disclosure to third parties as a result of the attorney-client privilege, the attorney work product doctrine or the joint defense doctrine. Confidential Information may also include, but is not limited to, financial, appraisal, statistical, personal, engineering, technical, and other data and information or to legal claims and disputes arising from these activities. Such information may be generated by the Parties or provided to them by non-employee agents of the Parties.
3. The Parties agree to exchange Confidential Information as necessary to further fulfillment of their joint interests and obligations, a matter of common interest to all Parties. The Parties further affirm that disclosure among the Parties subject to this Agreement of such Confidential Information is essential to protecting the Parties' common interests concerning their activities described in Recitals A and B, and that the Parties intend that the common interest doctrine govern the communication of confidential information and materials under this Agreement. In this regard, the shared Confidential Information is intended, in part, to advance the Parties' shared interests in securing legal advice on the common matter related to their efforts to prosecute or defend against claims or defenses raised in any legal, judicial, regulatory, administrative, or legislative action or activity.
4. All information and communications that are privileged or protected as to any of the Parties, their counsel, employees, agents or consultants, will remain privileged and protected notwithstanding the communication of such information or communications to and among the Parties, or their counsel, employees, agents and consultants in accordance with California Evidence Code section 912(d), as recognized by the "common interest doctrine" described in *Raytheon Co. v. Superior Court* (1989) 208 Cal.App.3d 683, and the cases decided thereafter, which allow entities to share privileged communications without waiving a statutory privilege, when certain conditions are fulfilled.

5. The Parties shall take all necessary measures to protect Confidential Information and, consistent with provisions of the Public Records Act and any other laws requiring disclosure, treat any shared Confidential Information as confidential. The Parties shall impose all the requirements of this Agreement on all of their respective officers, members, employees and agents with access to Confidential Information. Only persons authorized in writing by a person in charge of one of the Parties to receive Confidential Information shall be permitted to obtain Confidential Information. Furthermore, any Confidential Information obtained by the Parties shall only be used for purposes which are consistent with existing law. As provided in Government Code section 6254.5, any exchange of Confidential Information among the Parties for the purpose of advancing the common interest described herein shall not constitute a "waiver" of any exemption provided under the Public Records Act.
6. The Parties shall ensure that all media, including electronic media, containing Confidential Information to which the Parties, and any of their officers, employees, and agents, to whom are given access, are protected at the level of the most confidential or sensitive piece of data on the media. Any Party shall notify all other Parties promptly if a security breach involving Confidential Information occurs.
7. The Parties agree to notify one another promptly of any requests or demands by subpoena, discovery request, the California Public Records Act, or otherwise, for disclosure of any Confidential Information provided to one another. If the Parties are legally compelled to disclose any Confidential Information to outside parties, the following procedures shall be followed:
  - a. The Party that received the request or demand shall notify the other Parties and initially determine whether the requested or demanded Confidential Information can be protected pursuant to law.
  - b. Any Party shall have the right to seek a protective order that may be based upon a privilege that another Party that received the request or demand might hold.
  - c. If such an order is sought, the Party that received the request or demand will refrain, to the extent provided by law, from disclosing the requested or demanded Confidential Information until such time as a final disclosure agreement or judicial determination is made concerning the request or demand. The costs and expenses for seeking a protective order shall be borne solely by the Party opposing the request or demand.
8. Nothing in this Agreement shall constitute or is intended to be a waiver of any attorney client privilege, work product privilege, deliberative process privilege, or

any other privilege, exemption, or immunity, including protections or requirements imposed by or available under any applicable law. All documents and other information comprising Confidential Information shall remain subject to the applicable privileges and will be kept confidential by the Parties.

9. Any written Confidential information that is shared or exchanged will be clearly marked, “Confidential,” “Confidential-Attorney Client Privileged Communication” or “Attorney Work Product Privileged,” or by other markings asserting any other applicable protection or privilege, except that failure to mark written Confidential Information shall not be deemed a waiver of any applicable privilege.
10. Unless required by law, this Agreement will not be disclosed or used as evidence for any purpose, including, but not limited to, evidence in support of or opposition to a motion to compel the production of evidence, unless it is offered to the court in support of the privileges the Parties intend to be preserved under this Agreement.
11. The restrictions of this Agreement on the use and disclosure of Confidential Information shall not apply to information that:
  - a. Is or becomes publicly known or available by actions not in violation of this Agreement.
  - b. Is prepared solely by the Party that seeks to disclose the information and that does not contain any information prepared by any other Party.
  - c. Is required to be disclosed pursuant to any applicable statute, law, rule or order of any governmental authority or pursuant to any order of any court of competent jurisdiction. In cases where there is a question as to whether Confidential Information consists of non-disclosable, privileged documents or communications, or whether it constitutes a public record or is exempt from disclosure under the California Public Records Act, the Party considering the disclosure of such documents or information shall comply with Section 6 of this Agreement.
12. The Parties agree that this Agreement may only be amended in writing.
13. Each Party agrees that the confidentiality obligations set forth herein apply to Confidential Information shared among the Parties upon and subsequent to this Agreement’s formal execution, as well as to Confidential Information that may have been communicated between and/or among the Parties and their legal counsel prior to the formal execution of the Agreement and thus, to that extent, this Agreement is intended to continue the prior understanding of the Parties regarding the confidentiality of such materials and information.



14. Each Party agrees that the confidentiality obligations set forth herein shall survive the termination of this Agreement. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Confidential Information that was shared with the withdrawing party prior to the formal execution of this Agreement as well as to the Confidential Information shared during the time period when that Party was a party to this Agreement. In addition, if this Agreement is terminated for any reason, each Party shall be obligated to continue to protect the confidentiality of Confidential Information in its possession or knowledge as of the date of termination of the Agreement as provided by law.
15. The Parties acknowledge that any other joint defense or confidentiality agreements which may exist between the Parties shall remain in effect. This Agreement shall not supersede or amend any other such agreement.
16. Any of the six (6) Parties to this Agreement may sponsor and allow an interested affiliated entity to execute the Addendum attached hereto as Exhibit A to join this Agreement, without modification or addition of any terms. By executing Exhibit A, the affiliated entity agrees to abide and be bound by the terms of this Agreement. Upon execution of Exhibit A, the Party who allowed an affiliated entity to execute the Exhibit shall forward a copy of the executed Exhibit A to all Parties to this Agreement. Only one of the six (6) named, original Parties to this Agreement may allow an affiliated entity to execute Exhibit A. Any attempt by an affiliated entity to allow another entity to execute Exhibit A, or to modify or add terms to the Agreement, shall be void ab initio.
17. Any dispute or proceeding to interpret or enforce this Agreement will be brought in a court of competent jurisdiction in Sacramento County, California, under California law. Any costs associated with such dispute or proceeding shall be borne separately by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

**Mendocino Inland Water and Power Commission:**

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

**Sonoma County Water Agency:**

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

**Round Valley Indian Tribes:**

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

**Trout Unlimited:**

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

**County of Humboldt:**

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

**California Trout:**

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

**EXHIBIT A**

**ADDENDUM TO AMENDED AND RESTATED CONFIDENTIALITY AND  
COMMON INTEREST DEFENSE AGREEMENT**

RECITALS

WHEREAS, the City of Cloverdale desires to enter into the Amended and Restated Confidentiality Agreement by and between Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, Round Valley Indian Tribes, County of Humboldt, California Trout, and Trout Unlimited, dated January 1, 2020 (“Agreement”);

WHEREAS, Mendocino Inland Water and Power Commission (“Sponsoring Party”) has agreed to sponsor the City of Cloverdale and allow it to sign this Addendum, thereby allowing Mendocino Inland Water and Power Commission to share information and materials necessary to carry out the Parties’ activities described in the Recitals of the Agreement; and

WHEREAS, City of Cloverdale has received a copy of the Agreement and hereby agrees to abide and be bound by the terms of the Agreement.

TERMS OF AGREEMENT

THEREFORE, the City of Cloverdale agrees as follows:

1. The Recitals stated above are true and correct.
2. The City of Cloverdale agrees to abide and be bound by the terms of the Amended and Restated Confidentiality and Common Interest Defense Agreement by and between Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, Round Valley Indian Tribes, County of Humboldt, California Trout, and Trout Unlimited, dated January 1, 2020, in the same manner as if it was an original party to the Agreement.

IN WITNESS WHEREOF, the City of Cloverdale and Sponsoring Party have executed this Agreement.

Sponsoring Party:

City of Cloverdale:

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

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