



*Rio Dell City Hall
675 Wildwood Avenue
Rio Dell, CA 95562
(707) 764-3532
cityofriodell.ca.gov*

November 7, 2023

TO: Rio Dell City Council

FROM: Kyle Knopp, City Manager

SUBJECT: Approval of Employment Agreement for Wastewater Superintendent

IT IS RECOMMENDED THAT THE CITY COUNCIL:

Authorize the City Manager to Execute the Agreement

BACKGROUND AND DISCUSSION

Attached is the employment agreement for the Wastewater Superintendent position. The document has been reviewed by counsel. The agreement is in line with prior agreements for the position with the exception of Section 9. Section 9 has been amended to allow Work-Home city vehicle use. Since the Wastewater Superintendent is on call virtually at any time, this amendment is appropriate.

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Staff believes that through a combination of cost and scope reductions and identification of new funding for the project, a positive and substantive project is still possible. Staff will return to the Council for approval of any contract and recommended financing approach. ///

**CITY OF RIO DELL
WASTEWATER SUPERINTENDENT
EMPLOYMENT AGREEMENT**

This Employment Agreement (this “Agreement”) is made and entered by and between the **CITY OF RIO DELL**, a municipal corporation of the State of California, hereinafter referred as the “Employer” or “City” and **SUNSHINE KELLY**, hereinafter referred to as “Employee” or “Wastewater Superintendent”, both of whom understand as follows:

RECTIALS

A. WHEREAS, Employer desires to employ the services of Sunshine Kelly as the Wastewater Superintendent of the City of Rio Dell; and

B. WHEREAS, it is the desire of the Employer, to provide certain benefits, establish certain conditions of employment, and set working conditions of said Employee; and

C. WHEREAS, Employee desires to accept employment as the Wastewater Superintendent of the said City.

AGREEMENT

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

SECTION 1. DUTIES. Employer hereby agrees to employ Sunshine Kelly as Wastewater Superintendent of said Employer to perform the functions and duties specified in the Ordinances of said City, pursuant to California Government Code section 36506, and to perform other legally permissible and proper duties and functions as the Wastewater Superintendent shall from time to time be assigned.

SECTION 2. TERM. This Agreement shall remain in effect through June 30, 2028, unless Employee’s term of employment is terminated earlier as provided in this Section 2 or Section 3 of this Agreement, or by the voluntary resignation of Employee. Should Employee elect to resign, Employee shall provide Employer with thirty (30) days written notice prior to resignation.

- a. **Termination from Employment; 90 Day Limitation on Termination and Severance Pay.** Except in the event of immediate termination for cause as a result of a conviction or a plea of no contest to a felony as stated in Section 2.b. of this Agreement, below, the Wastewater Superintendent shall not be terminated from employment within the ninety (90) day period following the appointment of a new City Manager. The purpose of this provision is to allow any newly appointed City Manager to directly observe the actions and ability of the Wastewater Superintendent in the performance of the powers and duties of his office. In all other circumstances, the Wastewater Superintendent can be terminated from employment **with or without**

cause and for any reason (or no reason at all) following two (2) weeks written notice from the City Manager, and without notice under Section 2.b. of this Agreement. In the case of employment termination prior to expiration of this Agreement (i.e., prior to June 30, 2023) the Wastewater Superintendent shall be entitled to receive severance in a lump sum and all unused vacation, and executive leave time, **as Employee’s sole and exclusive remedy and right(s) to payment at employment termination.** “Severance” shall be paid according to the following schedule:

<u>Years of Continuous Service</u>	<u>Severance Pay</u>
0-1 year	2 months’ salary
1-2 years	3 months’ salary
2-3 years	4 months’ salary
3-4 years	5 months’ salary

b. **Severance Payment Exception.** Should the Wastewater Superintendent be terminated for cause or as a result of a conviction or plea of no contest to a felony no severance pay will be provided upon employment termination. If the Wastewater Superintendent voluntarily leaves employment with the City of Rio Dell or resigns, no severance pay will be provided upon separation.

SECTION 3. SUSPENSION OR REMOVAL. The Employee may be suspended, removed, or dismissed from the service of the City of Rio Dell at any time during the term of this Agreement pursuant to Section 2 above or to the provisions of any applicable City of Rio Dell Ordinances.

SECTION 4. DISABILITY. Employer may terminate Employee’s employment if Employee suffers a disability that renders Employee unable, as determined in good faith by the City Manager, to perform the essential functions of the position, even with reasonable accommodation, for four months (twelve weeks) in any 12-month period. If Employee’s employment is terminated under this Section 4, Employee shall be compensated for all accrued obligations through the termination date, which for purposes of this section shall be a date specified by the City Manager. Employer shall also pay to Employee a severance pay as set forth in Section 2 above. After the termination date, Employer shall not pay to Employee any other compensation or payment of any kind, or severance, or payment in lieu of notice. All benefits provided by Employer to Employee under this Agreement or otherwise shall cease on the Termination Date.

SECTION 5. SALARY. The Salary for the Wastewater Superintendent shall be as follows: Effective November 1, 2023 through June 30, 2028, the salary schedule for the Wastewater Superintendent shall be set in accordance with the longevity based salary steps set forth in the salary pay scale adopted by the Rio Dell City Council on February 1, 2022, as Resolution No. 1523-2022, a copy of which is attached hereto as Exhibit “A” and incorporated by reference (the “Salary Schedule”). Upon the effective date of this employment contract with the City of Rio Dell, the initial salary will begin on Step C of the salary schedule.

Employee shall receive a five percent (5%) increase upon completion of ten (10) years of continuous, uninterrupted employment with the City, and another five percent (5%) increase upon completion of twenty (20) years of continuous, uninterrupted employment.

Employee shall be provided "On-Call" compensation when assigned this duty by the Public Works Director or City Manager. On-Call compensation shall be provided at the level recited in the Rio Dell Employee's Association Agreement.

SECTION 6. PERFORMANCE EVALUATION. The City Manager shall review and evaluate the performance of the Employee not later than twelve (12) and twenty-four (24) months from the effective date of this Agreement. From time to time as may mutually be deemed appropriate, the City Manager and Employee shall define such goals and performance objectives in writing which are determined necessary for the proper operation of the Department and City. Such goals and performance objectives shall be considered as part of the annual performance review of Employee.

SECTION 7. HOURS OF WORK. It is recognized that Employee may be expected to work in excess of eighty (80) hours per pay period at the direction of the City Manager. Employee shall receive no overtime pay or compensatory time off. Employee acknowledges that the position of Wastewater Superintendent is an administrative level, supervisory position exempt from rights to overtime pay under California Wage and Hour law and regulations.

SECTION 8. OTHER EMPLOYERS OR OUTSIDE ACTIVITIES. Employee agrees to remain in the exclusive employ of Employer and not to become employed by any other employer in other employment until termination of the employment relationship. The term "other employment" shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on Employee's time off. Employee shall not spend more than four (4) hours per week in teaching, counseling, or other non-employer connected business without the prior written approval of the City Manager.

SECTION 9. AUTOMOBILE. Employee's duties require that he shall have the use at all times during his employment with Employer an automobile to perform Employer's business. Employee's use of his private vehicle for City business shall be reimbursed to Employee at the current standard mileage rate as published by the United States Internal Revenue Service. Subject to the provisions of the City's separate Travel and Reimbursement Resolution, Employee shall be responsible for paying for all gas, maintenance, and repair of said automobile. Employee shall be responsible for paying for all liability, property damage, and comprehensive insurance on said automobile. Employee shall maintain a valid driver's license and maintain insurable driving status as defined by City's insurance coverage. Employee shall provide employer with a Department of Motor Vehicle H-6 report annually to verify minimum driving standards.

In addition to the foregoing, Employee shall be provided a City of Rio Dell owned vehicle for use during the performance of Employee's job duties. Employee shall use the vehicle exclusively as follows: (a) for travel from Employee's home to Employee's place of employment for City business on day(s) Employee is working for the City; (b) for City business related travel while the Employee is at Employer's place of business; and (c) to directly return to Employee's home from Employer's place of business on Employees days(s) of employment with City.

SECTION 10. VACATION, SICK LEAVE, HOLIDAYS, AND EXECUTIVE TIME. For the health and welfare of its employees, it is the policy of the City of Rio Dell that employees be encouraged to use the vacation benefits granted by the City and shall take an annual vacation of at least 40 hours.

Employee will receive eighty (80) hours of executive leave each fiscal year in (2) installments; 40 hours on July 1 and 40 hours on January 1. The taking of vacation and executive leave time shall be coordinated with and approved by the City Manager, who shall not unreasonably withhold their approval.

Employee may cash out or utilize the Executive Time installment beginning July 1. Employee shall be paid on the first pay period of June for each calendar year during the term of this agreement for accrued Executive Leave that remains unused or unpaid during the previous (12) months.

Employee accrues a sick leave benefit of eight (8) hours each calendar month actually worked by Employee, Rules pertaining to the use of sick leave are detailed in the Rio Dell Personnel Rules.

Upon the employee's separation from City service, he or she shall be paid for any accrued sick leave beginning after five years of full time employment based upon the following schedule:

5 – 7 years	-	10%
8 – 12 years	-	15%
13 – 20 years	-	20%
21 + years	-	25%

The amount paid out under this Article shall not exceed 240 hours.

Vacation time shall accrue in accord with the following schedule based on years of continuous employment service to the City:

<u>Years of Continuous Service</u>	<u>Hours per Year</u>	<u>Accrual Max.</u>
One to three (1-3)	80 hours	120 hours
Four to ten (4-10)	120 hours	180 hours
Eleven to fifteen (11-15)	160 hours	240 hours
Sixteen to twenty (16-20)	200 hours	300 hours

Employee shall also be entitled to the same paid holidays as the Rio Dell Employees' Association.

SECTION 11. ACCRUED VACATION LEAVE. The amount of vacation time allowed to be accrued at the end of any pay period shall not exceed 1.5 times the annual amount of vacation time for the Employee's year of service stated in the schedule recited in Section 10 (not to exceed a maximum of 300 hours). Upon reaching the applicable vacation accrual maximum in accord with the schedule recited in Section 10, Employee will not earn or accumulate additional

vacation time and shall be automatically cashed out of 40 hours of accrued vacation, to be paid in the next pay period.

Employee may elect to buy down his vacation accrual at any time, provided that he has scheduled a vacation leave with the City Manager as appropriate or has taken his annual vacation and the balance in his vacation account will be at least 40 hours after the buy down.

SECTION 12. WORK RELATED EXPENSES AND REIMBURSEMENT. Employer agrees to provide new rain gear and rubber/neoprene boots to Employee once per fiscal year. Employer shall provide all safety equipment to Employee as required by law. Employee shall be reimbursed for the purchase of protective clothing and/or gear, as defined by IRS Publication 529 (safety boots, safety glasses, hard hats, work gloves, etc.), in an amount not to exceed \$300.00 per fiscal year upon presentation of applicable expense receipts. Employer also agrees to pay Employee a monthly cell phone allowance to ensure Employee can be contacted at all times. Employee must maintain cell phone service. The City's cell phone policy established by separate Resolution of the City Council is applicable in all regards for Employee.

SECTION 13. MEDICAL, DENTAL AND VISION INSURANCE REIMBURSEMENT. Medical, Dental and Vision Insurance shall be provided for the Wastewater Superintendent as the City provides for other management positions. The contribution amount by the City shall be 100% of the premium costs for these benefits for Employee and 70% of the total premium costs for Employee's dependents, depending on their age and status as a student as provided in the plan document. The City reserves the right to choose, in the City's unilateral discretion, alternative medical coverage during the term of this Agreement. If the City elects to procure alternative medical coverage during the term of this Agreement, the City will seek to procure insurance of approximate comprehensive equivalency, but Employee acknowledges that Employee has no expectation that comparable coverage will continue since the City, like all insurance coverage procurers, is subject to significant fluctuations in the scope, availability and cost of insurance. Employee may elect to substitute compensation for health, dental, and vision insurance coverage. The level of compensation shall be \$125 per pay period for all health, vision and dental coverage, collectively. Proof of alternative health insurance must be provided to Employer before the requesting Employee may substitute compensation for insurance. If elected by Employee and if the Employee has a spouse/qualified dependent who has reached the age of 65 and is eligible for Medicare coverage, Employee shall be entitled to a stipend of One Hundred and Fifty (\$150.00) dollars (less applicable payroll taxes) per pay period in lieu of City provided health insurance coverage through the City's current medical plan for the spouse/qualified dependent and effective upon the spouse/qualified dependent's removal from the City's plan. The amount of the stipend is in addition to the Employee's regular salary and is subject to all payroll taxes as required by law, with Employee bearing and paying the regular portion of payroll tax allocated to Employee.

SECTION 14. DEFERRED COMPENSATION. The Employer does not yet participate in and is not a party to the Public Employees Retirement System of the State of California. The Employer participates in a deferred Compensation Plan. The Employer shall contribute and pay an amount equal to twelve percent (12%) of the Employee's salary to the Deferred

Compensation Plan to the extent accrued proportional to the amount of time worked during any given year.

SECTION 15. LIFE INSURANCE. A term life insurance policy in the amount of Seventy-Five Thousand Dollars (\$75,000.00) shall be provided by the Employer for the Employee, with the Employee entitled to designate Employee's beneficiary.

SECTION 16. AGREEMENT EFFECTIVE. This Employment Agreement shall become effective July 1, 2020 and shall remain in effect through June 30, 2023, subject to potential early termination under Sections 2, 3 and 4 of this Agreement and changes pursuant to amendments or adjustments made at mutually agreed upon times throughout Employee's term of employment with Employer.

SECTION 17. INDEMNIFICATION. Employer shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's duties as Wastewater Superintendent. Employer's indemnity obligation shall not apply to any claims or liabilities, of any type or nature, arising out of any intentional acts, criminal acts or willful misconduct of Employee.

SECTION 18. BONDING. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 19. DUES AND SUBSCRIPTIONS. Employer agrees to budget and to pay for the professional dues and subscriptions of Employee necessary to support growth, advancement and active communication for the good of the City. Employee shall distribute to and share with the City Manager written material and information distributed by the said associations.

SECTION 20. LICENSING AND TRAINING. Employer agrees to budget and pay for the professional licensing and continued education of Employee for training as necessary and approved by the City Manager.

SECTION 21. TRAVEL EXPENSES. Employer hereby agrees to budget for and to pay the travel and subsistence expenses of Employee for official and professional travel of Employee while on City business, provided that the City Manager has first approved and authorized said travel and training expenses.

SECTION 22. ATTORNEY'S FEES. Should any litigation be commenced between the parties to this Agreement or the rights and duties of either relationship thereto, the prevailing party in such litigation shall be entitled in addition to such other relief as may be granted, to reasonable sum as and for attorney's fees which shall be determined by the court.

SECTION 23. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The City Manager may fix any such other terms and conditions of employment, not in conflict with City Ordinances, Rules or Policies, as he/she may determine from time to time, relating to the performance of Employee.

SECTION 24. NOTICES. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER
City of Rio Dell
Rio Dell City Hall
675 Wildwood Ave
Rio Dell, California 95562

EMPLOYEE
675 Wildwood Ave
Rio Dell, California 95562

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written in the course of transmission in the United States Postal Service.

SECTION 25. GENERAL PROVISIONS.

- A. The text herein shall constitute the Agreement between parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Agreement shall become effective commencing immediately, subject to Section 16 above.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- E. This Agreement (including all Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or amended except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

~~**SECTION 26. STIPEND.** The City shall provide a one-time stipend of \$1,040.00 to all Employee which shall be paid in two installments as follows: (1) \$520 the first full pay period following ratification of this Agreement and within the 2020-21 fiscal year, and (2) \$520 within the first full pay period in December 2020.~~

IN WITNESS WHEREOF, the City of Rio Dell has caused this Agreement to be signed and executed in its behalf by its City Manager, and the Employee has signed and executed this Agreement, both in duplicate.

EMPLOYEE

Sunshine Kelly
Wastewater Superintendent

Date

EMPLOYER

Kyle Knopp
City Manager

Date

Approved as to form:

Russell Gans, City Attorney

Date