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5 Attorneys for Defendant and Third-Party Plaintiff
 CITY OF EUREKA
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8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 KFD ENTERPRISES, INC., a California)
 Corporation dba Norman’s Dry Cleaner,)
 12 Plaintiff,)
 13 v.)
 14 CITY OF EUREKA,)
 15 Defendant.)

CASE NO. CV-08-4571 MMC
 STIPULATION AND ~~PROPOSED~~
 ORDER FOR FILING AMENDED
 THIRD-PARTY COMPLAINT BY
 DEFENDANT CITY OF EUREKA AS
 TO THIRD PARTY DEFENDANT
 ENVIRONMENTAL RESOLUTIONS,
 INC.
 [CIVIL C.R. 7-12]

17 _____)
 18 CITY OF EUREKA,)
 19 Counter-Claimant and Third-Party Plaintiff)

20 vs.)
 21 KFD ENTERPRISES, INC., a California)
 Corporation dba Norman’s Dry Cleaner,)
 22 Unocal Corporation,)
 23 Cross-Defendant and Third Party)
 Defendant)

24 _____)
 25 Third-Party Defendant, Counter-Claimant and Cross-Defendant Environmental
 26 Resolutions, Inc. and Defendant, Third Party Plaintiff, and Counter Defendant City of Eureka
 27 hereby stipulate as follows:
 28



1 Whereas Environmental Resolutions, Inc. has filed a Motion for Judgment on the
2 pleadings inter alia to the Third-Party Complaint of City of Eureka, scheduled for hearing on
3 April 9, 2010;

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5 Whereas the City of Eureka and Environmental Resources, Inc. have conferred about
6 said motion and the response thereto by the City of Eureka;

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8 Whereas City of Eureka believes that in addition to the stipulation herein, a number of
9 issues raised by said motion can be resolved or otherwise addressed by amendment of said Third
10 Party Complaint;

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12 Whereas City of Eureka believes that the court's ruling on said motion as to the
13 Complaint filed by KFD Enterprises, Inc. will provide guidance with respect to the viability of
14 the City of Eureka's claims against Environmental Resources, Inc. under CERCLA and the
15 HSAA;

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17 Therefore, Environmental Resolutions, Inc. and City of Eureka hereby stipulate to each
18 of the following:

19 (1) City of Eureka may have to and including April 30, 2010 to file its Third Amended
20 Complaint as to Environmental Resolutions, Inc.;

21 (2) Environmental Resolutions, Inc. may have to and including May 28, 2010 to file a
22 responsive pleading to said Third Amended Complaint;

23 (3) said Third Amended Complaint shall not add any additional claims for relief against
24 Environmental Resolutions, Inc.;

25 (4) said Third Amended Complaint shall not seek the recovery of punitive damages
26 against Environmental Resolutions, Inc.;

27 (5) said Third Amended Complaint shall not seek against Environmental Resolutions,
28 Inc. the recovery of the attorneys fees of the City of Eureka's attorneys but may seek the

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recovery of attorneys fees liability which may be imposed on the City of Eureka.
In agreeing to this stipulation, Environmental Resolutions, Inc. does not concede that
any type of indemnity is proper, but only that the City of Eureka may seek such
indemnity in the Third Amended Complaint subject to any future legal challenges by
Environmental Resolutions, Inc.

DATED: March 16, 2010

DAVIDOVITZ & BENNETT LLP

By: /s/ Moris Davidovitz
MORIS DAVIDOVITZ
Attorneys for CITY OF EUREKA

(The filer hereby attests that concurrence in the filing of this document has been obtained from the signatory below.)

DATED: March 16, 2010

GORDON & REES LLP

By: /s/ George A. Acero
GEORGE A. ACERO
Attorneys for Environmental Resolutions,
Inc.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 24, 2010


MAYINE M. CHESNEY
UNITED STATES DISTRICT JUDGE