

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT AND THE
LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT
FOR INTERIM AIR POLLUTION CONTROL OFFICER SERVICES

This Memorandum of Understanding ("MOU") is between the Mendocino County Air Quality Management District, an air quality management district formed pursuant to California Health and Safety Code section 40000 *et seq.*, ("Mendocino") and the Lake County Air Quality Management District, an air quality management district formed pursuant to California Health and Safety Code section 40000 *et seq.* ("Lake").

WHEREAS, MENDOCINO, by and through its Air Quality Management District, desires to retain the services of LAKE for the purpose of the functions of Interim Air Pollution Control Officer; and

WHEREAS, such work involves the performance of professional, expert and technical services for a specified period; and

WHEREAS, MENDOCINO has no employees available to perform such services and is unable to hire employees for the performance thereof for the period specified herein.

NOW THEREFORE, the parties mutually agree as follows:

1. Scope of Services:

LAKE agrees to provide MENDOCINO the services of an Interim Air Pollution Control Officer, for the purpose of carrying out the duties and obligations as specified in Health and Safety Code sections 40751 through 40753, sufficient to meet the requirements of the California Air Resources Board, to the extent that such services are not capable of being performed by employees of MENDOCINO. Such services may be provided personally by the LAKE Air Pollution Control Officer. Examples of these services may include:

Permitting stationary sources;

Other issues at or arising from stationary sources, such as non-compliance and enforcement;

Prescribed and Open Burn program;

Grant program oversight

Review and signature of official reports and grant programs;

Budget management;

Drafting and submitting District Board agenda items that may be needed by working with the Mendocino County CEO's Office, Mendocino County Counsel's Office and the Clerk of the Board;

Attend District roundtable staff meetings at least once a week;

Attend other meetings with Mendocino County Officials as needed.

LAKE shall devote the time reasonably necessary, not to exceed 10 hours per week, to perform services for MENDOCINO to the extent doing so does not conflict with the ability of the Air Pollution Control Officer of LAKE to perform his/her official functions and obligations for LAKE. (Additional hours may be requested by MENDOCINO for special projects or needs in addition to the 10 hours per week; special projects must be approved in advance by the LAKE APCO.)

2. Compensation:

- A. MENDOCINO shall pay LAKE as compensation for the Interim Air Pollution Control Officer services an hourly rate of \$110, with an anticipated maximum of \$4,400 per month (this amount may be exceeded if LAKE provides additional services for special projects as outlined in #1 above), for each month any part of which the services described herein are provided. LAKE will provide MENDOCINO an invoice each month, which MENDOCINO will process expeditiously for payment. The total compensation payable to LAKE hereunder shall not exceed Twenty-Seven Thousand Four Hundred Dollars (\$27,400) for the term of this MOU.
- B. When requested by MENDOCINO, LAKE shall provide the Interim Air Pollution Control Officer services on-site in Mendocino County when possible. LAKE travel expenses shall be covered in the monthly flat rate specified under this Paragraph 2.A.

3. Term:

This MOU shall begin August 1, 2022, and shall remain in force until January 31, 2023.

4. Termination:

Either party may terminate this MOU without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination. In the event of any termination of this MOU, LAKE shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to MENDOCINO resulting from a breach of this Agreement by LAKE.

5. Relationship of Parties:

MENDOCINO and LAKE are separate air quality management districts of the State of California. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that LAKE shall not be entitled to any benefits to which MENDOCINO employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. LAKE shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

6. Reports:

To the extent necessary, LAKE agrees to provide MENDOCINO with any and all reports that may be required by state and/or federal agencies as part of its duties under this MOU. If required, reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

7. Indemnification:

- A. Mutual Indemnity. Each Party shall indemnify, defend and hold harmless the other Party hereto and their officers, officials, employees, agents, and volunteers from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including, without limitation, attorney's fees and other litigation costs, arising out of or in connection with the performance of its duties and obligations hereunder, except such loss or damage which was caused by the sole negligence or willful misconduct of the other Party.
- B. Comparative Liability. Notwithstanding Paragraph 7.A above, in the event that more than one Party is held to be negligently or willfully responsible, each responsible Party will bear its proportionate share of liability as determined in any such proceeding. Each Party will bear their own costs and attorneys' fees.

8. Insurance Coverage:

Without limiting the Parties' indemnification obligations provided for herein, each Party will maintain in force and effect, at its own expense, comprehensive general liability and property damage insurance, comprehensive automobile insurance, workers' compensation and professional liability insurance throughout the term of the MOU.

9. Dispute Resolution:

Disputes between MENDOCINO and LAKE in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the Chief Executive Officer of Mendocino County and the County Administrative Officer of Lake County.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party. Each Party shall pay one half of the fee of the mutually agreed upon mediator.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

10. Record Retention and Inspection:

- A. Maintenance and Preservation of Records. LAKE agrees to timely prepare accurate and complete records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this MOU, including, but not limited to, the costs of administering this MOU.

11. Monitoring:

LAKE agrees that MENDOCINO has the right to monitor all activities related to this MOU, including, without limitation, the right to review and monitor LAKE's records, programs or procedures, at any time, as well as the overall operation of LAKE's programs, in order to ensure compliance with the terms and conditions of this MOU.

12. Compliance with Applicable Laws and Licensure Requirements:

Each Party hereto agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services covered by this MOU. Both Parties further agrees to comply with any and all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

13. Jurisdiction and Venue:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California.

14. Non-Discrimination:

- A. Professional Services and Employment. In connection with the execution of this MOU, LAKE, and its subcontractors, shall not unlawfully discriminate in the provision of religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state, or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.

- B. Compliance with Anti-Discrimination Laws. LAKE further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975 ; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state

and/or federal laws and regulations , all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2, of the California Code of Regulations are incorporated into this MOU by reference and made a part hereof as if set forth in full.

15. Provisions Required by Law:

This MOU is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

16. Reference to Laws and Rules:

In the event any law, regulation, policy or procedure referred to in this MOU is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

17. Waiver of Default:

The waiver by either party of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU. In no event shall any payment by MENDOCINO constitute a waiver of any breach of this MOU or any default which may then exist on the part of LAKE. Nor shall such payment impair or prejudice any remedy available to MENDOCINO with respect to any breach or default. MENDOCINO shall have the right to demand repayment of, and LAKE shall promptly refund, any funds disbursed to LAKE, which, in the judgment of MENDOCINO, were not expended in accordance with the terms of this MOU.

18. Non-Liability of County Officials and Employees:

No official or employee of MENDOCINO or LAKE shall be personally liable for any default or liability under this MOU.

19. Standard of Practice:

LAKE warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. LAKE's duty is to exercise such care; skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

20. Subcontracts:

LAKE shall obtain prior written approval from MENDOCINO before subcontracting any of the services to be provided hereunder. Any and all subcontracts will be subject to all applicable provisions of this MOU. LAKE shall remain legally responsible for the performance of all terms and conditions of this MOU, including work performed by third parties under subcontracts, whether approved by MENDOCINO or not.

21. Survival:

The duties and obligations of the parties set forth in Section 4 - Termination, Section 10 - Record Retention and Inspection, and Section 7 - Indemnification shall survive the expiration or termination of this MOU.

22. Conflicting Terms or Conditions:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in paragraphs 1 through 31 of this MOU, paragraphs 1 through 31 of this MOU shall have priority.

23. Independent Construction:

The titles of the sections, subsections and paragraphs set forth in this MOU are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this MOU.

24. Severability:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

25. Notices:

All notices required to be given or payments required to be made pursuant to the terms of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

MENDOCINO: Mendocino County Air Quality Management District
Attn: Air Quality Administrative Coordinator
306 East Gobbi Street

LAKE: Ukiah, CA 95482
Lake County Air Quality Management District
Attn: Douglas Gearhart
2617 South Main St.
Lakeport, CA 95453

26. Amendment:

This MOU may be amended at any time during the term of this MOU upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the parties hereto.

27. MOU Shall Bind Successors:

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

28. Interpretation:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

29. Force Majeure:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

30. Entire Agreement:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in its entirety any and all prior agreements, promises, representations, understandings and negotiations, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

31. Authority to Execute:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: [Signature]
DEPARTMENT HEAD

Date: 06/28/2022

Budgeted: Yes No

Budget Unit: 0327

Line Item: 862189

Org/Object Code:

Grant: Yes No

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]
Deputy CEO

Date: 06/28/2022

INSURANCE REVIEW:

By: [Signature]
Risk Management

Date: 06/28/2022

MENDOCINO COUNTY AIR QUALITY MANAGEMENT DISTRICT

By: [Signature]
TED WILLIAMS, Chair
BOARD OF DIRECTORS

Date: 07/13/2022

ATTEST:

DARCIE ANTLE, Interim Clerk of said Board

By: [Signature]
Deputy 07/13/2022

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Interim Clerk of said Board

By: [Signature]
Deputy 07/13/2022

Signatures Continued on Page 11

CONTRACTOR/COMPANY NAME

By: _____
SIGNATURE

Date: _____

NAME AND ADDRESS OF CONTRACTOR:

Lake County Air Quality Management District
2617 S. Main St.
Lakeport, CA 95453

By signing, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT

By: _____
EDDIE CRANDELL, Chair
BOARD OF DIRECTORS

Date: _____

ATTEST:

Susan Parker, Clerk of said Board

By: _____
Deputy

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

Susan Parker, Clerk of said Board

By: _____
Deputy

**MENDOCINO COUNTY AIR QUALITY
MANAGEMENT DISTRICT**

**LAKE COUNTY AIR QUALITY MANAGEMENT
DISTRICT**

COUNTY COUNSEL REVIEW:

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,
County Counsel

ANITA L. GRANT,
County Counsel

By: Matthew Kiedrowski
Deputy

By: _____
Deputy

Date: 06/28/2022

Date: _____

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed EB# 22-50

Mendocino County Business License: Valid

Exempt Pursuant to MCC Section: _____